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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

v.

UNITED STATES OF AMERICA

and

WILLIAM B. SAXBE, Attorney General of the United States, Individually and in His Official Capacity,

and

JOHNNY JACKSON, JR., ET AL., *Appellees*

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No.

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion by the lower court remains unreported. The lower court's opinion and order denying declaratory judgment are appended hereto.

JURISDICTION

Appellants, Peter H. Beer, Philip C. Ciaccio, Joseph V. DiRosa, Clarence O. Dupuy, Jr., John D. Lambert,

Jr., and James A. Moreau, appeal from a Judgment of the United States District Court for the District of Columbia denying appellants' request for a declaratory judgment that a redistricting plan for councilmanic elections, formulated by the City of New Orleans, Louisiana, does not violate Section 5 of the Voting Rights Act of 1965, 79 Stat. 439 (1965), as amended, 84 Stat. 315 (1970), 42 U.S.C.A. § 1973c (Supp. 1972). The judgment was entered on March 15, 1974 by the United States District Court for the District of Columbia, sitting as a three-judge court under the requirements of the said Statute. Appellants submit that this Court has jurisdiction over the questions on appeal since the said statute provides for a direct appeal to this Court. The questions on appeal are of such a substantial nature as to require plenary consideration by this Court.

The United States District Court for the District of Columbia entered an order denying the declaratory judgment on March 15, 1974 and Appellants filed in that court on April 5, 1974 a Notice of Appeal, which is appended hereto. Jurisdiction is vested in this Court under the Voting Rights Act of 1965, *supra,* and was confirmed in *Perkins* v. *Matthews,* 400 U.S. 379, 91 S. Ct. 431, 27 L. Ed. 2d 476 (1971) and *Allen* v. *State Board of Elections,* 393 U.S. 544, 561-563 (1969).

QUESTIONS PRESENTED

1. Whether the court considered and applied improper criteria in evaluating the redistricting plan and measured the effect of the plan with regard to its impact on minority voting rights against improper legal standards.

2. Whether the court improperly determined that the redistricting plan would have the effect of abridging the right to vote on account of race or color.

3. Whether the court improperly held that § 5 of the Voting Rights Act of 1965 was applicable to the at-large voting system for multi-member district councilmanic seats, which system had been in effect and unaltered in the City of New Orleans since prior to November 1, 1964, the effective date for this purpose of the Voting Rights Act of 1965.

STATEMENT OF CASE

A. Facts Material To Case

The present Charter of the City of New Orleans became effective on May 1, 1954 and provides for a Council of the City of New Orleans consisting of seven members, five of whom are elected from single member geographic districts of equal population and two of whom are elected at large. Section 3-103(3) of the Charter requires the Council to redistrict the five single-member districts in the City into equally populated districts within six months after the official publication of each federal decennial census. The voting system for the two at-large councilmen is not thereby altered or affected.

The City Council on March 2, 1972 passed a redistricting ordinance, commonly referred to as Plan I, and submitted the Plan to the Attorney General of the United States for approval in accordance with the requirements of Sec. 5 of the Voting Rights Act of 1965, *supra.* The Attorney General interposed an objection to Plan I.

The City Council passed Ordinance No. 5154 Mayor Council Series (hereinafter referred to as "M.C.S."), commonly denoted as Plan II, and submitted it to the Attorney General for approval. The Attorney General interposed an objection to the plan on June 9, 1973, stating in part "... the boundary lines prescribed by Ordinance 5154 M.C.S. appear to effect a dilution of black voting strength ..." *Beer* v. *United States* at 12 n.33, No. 1495-73 (D.D.C., March 15, 1974) (See Appendix at 9a). The plan "combines a number of black voters with a larger number of white voters in four of the five districts." *Id.* (See Appendix at 10a). The objections of the Attorney General left the redistricting plan unenforceable.

Various other plans had been considered by the City Council and the electorate prior to the adoption and submission of the second plan and the electorate had participated in the process through public hearings and on two occasions elections were held on the question of increasing the size of the City Council. The plans, including Plan II, were originally developed by the Research Staff of the City Council from guidelines which included recommendations arising from the Attorney General's opinions, case opinions, public sentiment, the National Association for the Advancement of Colored People (NAACP), and local political parties.

The guidelines included recommendations to avoid the dilution of minority rights, to achieve mathematical balance of population, to observe certain natural and historical boundaries, to devise contiguous and compact councilmanic districts, and to adhere to established Ward and Precinct boundaries to the extent possible.

Appellants, six members of the City Council, filed an action on July 25, 1973 in the United States District Court for the District of Columbia on behalf of the City of New Orleans against the United States of America. Appellants sought a declaratory judgment under Sec. 5 of the Voting Rights Act of 1965, *supra,* that the second councilmanic redistricting Plan (Plan II) has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

The Appellees, other than the United States, are Johnny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush, on behalf of themselves and others similarly situated, and are all black, adult citizens of the United States and of the State of Louisiana, and are registered voters of the Parish of Orleans, City of New Orleans, Louisiana and intervened in the court below and argued *inter alia* that the at-large voting system for two of the council seats should be included in the Court's consideration of the case. The said Appellees presented this argument despite the fact that the at-large voting system was in effect prior to the enactment of the Voting Rights Act of 1965, *supra,* and was not part of the redistricting plan. The said Appellees asserted that the effect of discrimination in the New Orleans voting system could only be determined thoroughly in the context of the interrelationship between the single-member and at-large voting systems.

B. Opinion of Lower Court

The court held that Plan II would have the effect of abridging the right of the black community to vote in councilmanic elections on account of race or color, and dismissed the action. The court, in making its

determination, did not address itself to the issue of whether the plan had such a purpose, relying upon its conclusion that the effect was an abridgment which, in itself, constitutes a violation of Sec. 5 of the Voting Rights Act of 1965, *supra.*

The court found that the *present* black voting strength among registered black voters would be diluted by Plan II. The opinion agreed that "a minority group is not constitutionally entitled to an apportionment structure designed to maximize its political advantage." *Beer* v. *United States, supra,* at 54-55, citing *Turner* v. *McKeithen,* at 13, No. 71-2221 (5th Cir., December 28, 1973) (See Appendix at 47a). Nevertheless, the court employed a standard of meaningful access to the political process and found the difference between the effect of the proposed plan and an optimal redistricting plan, constituted dilution, of black voting strength.

The court stated that to some extent, dilution of the right to vote is permitted under the equal protection standard if such dilution is rationally related to a permissible governmental interest. In the instant case, however, the court found that a condition would be placed on the exercise of the right to vote under Plan II, and since a condition generates an infringement of Constitutional right which a mere dilution of the right to vote fails to do, Appellants had to pass a more exacting test which required them to show that the dilutions were necessary to promote a *compelling governmental interest.*

The City Council Research Staff had formulated guidelines for use in developing Plan II, and the court conceded that, ". . . the local concerns reflected by the

guidelines paralleled factors which have endured exposure in state legislature apportionment cases. While population is the controlling criterion for judgment in controversies of that type, mathematical exactness in redistricting is an impractical goal and small departures from a mathematically precise 'one-man, one-vote' standard may be indulged". *Beer* v. *United States, supra,* at 56-57 (See Appendix at 48a-49a).

The court nevertheless found that the City of New Orleans had not demonstrated a sufficiently compelling governmental interest for its redistricting plan to justify any dilution of black voting strength.

The court also went on to state that ". . . the burden in the case at bar was at least to demonstrate that nothing but the redistricting proposed by Plan II was feasible." *Beer* v. *United States, supra,* at 61 (See Appendix at 53a).

The court also found that *potential* black voting strength in the black population would be diluted by Plan II. The court stated that historical events through generations of time had demonstrated official racial discrimination which had denied the black community meaningful access to the political process. The court conceded ". . . [that] judicial decisions and the Voting Rights Act have banished these obstacles to political functioning, and that race relations in the City have taken a turn for the better in recent years." *Beer* v. *United States, supra,* at 70 (See Appendix at 60a). Debilitating remnants of these obstacles were found by the court to remain, however. The court found such remnants in Plan II and held that Appellants must meet the burden of showing a *compelling governmental interest* with regard to its criteria for establishing Plan II.

The court also rejected Appellants' argument that the voting system for the councilmen at-large has not been altered since 1954 and therefore is not susceptible to regulation by Sec. 5 of the Voting Rights Act of 1965, *supra*. The court asserted that the impact of Plan II had to be considered in the context of all the circumstances pertaining to the right to vote and that the inter-relationship between the single-member and at-large voting systems constituted a relevant circumstance encompassed by Sec. 5 of the Act.

The court admitted that "multi-member districts are not *per se* unconstitutional, nor are they necessarily unconstitutional when used in combination with single-member districts." *Beer* v. *United States, supra,* at 79, citing *White* v. *Regester,* 412 U.S. 755, 765 (1973) (See Appendix at 68a). In review of the past history of official racial discrimination and other circumstances which denied the black community meaningful access to the political process, the court found that Plan II diluted black voting strength and that the City of New Orleans had not shown a compelling governmental interest in formulating Plan II. The court held the at-large voting system illegal under Sec. 5 of the Voting Rights Act of 1965, *supra,* even though the at-large voting system had not been changed since adoption of the city charter in 1954.

SUBSTANTIALITY OF QUESTIONS PRESENTED

The questions presented are so substantial as to require plenary consideration.

A. The lower court has taken a unique step in denying declaratory judgment under the provisions of Section 5 of the Act to a redistricting plan which does not discriminate invidiously against black voting strength.

The district court has applied improper criteria and employed improper standards in weighing the effect of the redistricting plan upon black voting strength in New Orleans.

The District lines under Plan II were formulated with attention to other reasonable considerations besides black voting strength. The city seeks to maintain historical and traditional boundaries and to preserve natural boundaries such as the Mississippi River and Lake Pontchartrain, as well as man-made boundaries such as important streets, highways and the numerous canals. City guidelines also call for contiguous and compact districts and a mathematical equalization of population of districts as required by the City Charter.

The court justified its failure to properly weigh these considerations along with the consideration of black voting strength by extending, through the misapplication of legal precedents, the concept of "compelling state interest" to include changes in political boundaries and districts. By so doing, the court essentially disregarded the guidelines and criteria used to formulate Plan II, while conceding their reasonableness, and concluded they were not justified by a "compelling state interest" and therefore not worthy of consideration.

As precedent for this holding the court relied upon *Dunn* v. *Blumstein,* 405 U.S. 330 (1972). The *Dunn* case, however, dealt with restrictions upon the act of voting itself and held that such a restriction (in that case an extended residency requirement) could only be justified by a "compelling state interest." There has been no claim in the present case that voters have been

denied the right to cast their vote and it is respectfully submitted that the "compelling state interest" doctrine should be limited in its application to situations involving direct restrictions on a citizen's right to cast his vote. Under the lower court's judgment the pertinent consideration is the percentage of black voters in each district. The consequence of this ruling is that a political entity can only avoid the application of mathematical formulas as controlling if its other interests are so critical as to develop a "compelling governmental interest" in deviating from districts which insure optimal black voting strength.

Instead of applying the exacting "compelling state interest" test, the district court should have applied the reasonable basis test to determine whether the redistricting considerations are rationally related to permissible governmental interests. The court refused to apply this standard. *Beer* v. *United States, supra,* at 59-60 (See Appendix at 51a). The City of New Orleans formulated Plan II on the basis of reasonable governmental considerations which permit the slight deviation from optimal black voting strength which may have occurred under Plan II.

The district court applied a test of "compelling state interest" to a situation where it is inapplicable. The court also presented a test of "compelling state interest" which is improperly formulated. The court stated that "the burden in the case at bar was at least to demonstrate that nothing but the redistricting proposed by Plan II was feasible." *Beer* v. *United States, supra,* at 61 (See Appendix at 53a). The court presented no authority as a source for this test. The new test appears to greatly expand the application of the law beyond established precedents.

Such an expansion of a traditional test for "compelling state interest" is unduly restrictive and illogical. No comprehensive redistricting plan can be formulated which is the only plan feasible. Reasonable variations, no matter how small, can always be made to achieve the same ends. Under the *Dunn* test, to show a "compelling state interest", a political subdivision need only show that other reasonable alternatives will not allow lesser constitutional infringements, and a political subdivision need not show that there are no reasonable alternatives at all. It is submitted that the district court improperly expanded the requirements for showing a compelling state interest.

B. If the criteria and standards utilized by the district court in reviewing Plan II were correctly applied, the court nevertheless incorrectly concluded that the effect of the plan was an abridgment of black voting strength. Dilution of black voting strength occurs when the black minority is denied meaningful access to the political process. *Beer* v. *United States, supra,* at 41-43 (See Appendix 35a-36a). Under Plan II, the black community has not been deprived of meaningful access to the political process. The intolerable abridgments of black voting strength which occurred in the redistricting plans in *City of Petersburg* v. *United States,* 354 F. Supp. 1021 (D.D.C. 1972) affirmed 410 U. S. 962 (1973) (process of annexation), and *White* v. *Regester,* 412 U. S. 755 (1973) (procedure of switching from single-member to at-large elections), did not occur here.

In the instant case, the City of New Orleans did not change its boundaries, nor its system of electing councilmen, but merely redistricted the city into five dis-

tricts of equal population as the City Charter required it to do after each decennial census, and in redistricting, as in Plan II, it did not dilute the vote of any voter.

The result of the district court's findings will greatly restrict the freedom of states and political subdivisions in formulating redistricting plans. If the judgment is allowed to stand, no court will tolerate a small deviation from insuring maximum potential black voting strength in future redistricting plans. Yet such an approach constitutes reverse racial gerrymandering and has been condemned by this Court as a violation of the equal protection standard.

C. The court's conclusion that Sec. 5 of the Voting Rights Act of 1965, *supra,* encompasses the at-large voting system in New Orleans also raises a substantial question requiring plenary consideration. The Voting Rights Act allows scrutiny by the United States Attorney General of changes in voting procedures after November 1, 1964. The at-large voting system in the City of New Orleans has remained unaltered since 1954 when the City Charter was adopted. The lower court approach violates the explicit application of the Voting Rights Act which was intended to apply only to voting procedures which were altered after November 1, 1964. The ramifications of such a judgment will be enormous.

This Court has in the past permitted judicial review of unaltered voting systems related to altered redistricting proposals, as in *Georgia* v. *United States,* 411 U.S. 526 (1973), and *City of Petersburg* v. *United States, supra,* but those cases involved reformulated redistricting plans which would have affected the outcome of elections in the unaltered voting systems. The unaltered systems were therefore included as part of the

political context in which the new redistricting plans would operate.

In the instant case, however, the redistricting of the single-member districts will have no effect upon the outcome of elections in the at-large systems. The district court improperly included the unaltered at-large voting system in the political context in which the altered voting system would operate. A comprehensive voting system must have ordinances which are interrelated in order to succeed in our increasingly complex society. Yet such a voting system is made by the district court to be completely vulnerable to federal scrutiny upon the alteration of a minor ordinance. The time threshold in Sec. 5 has been ignored by the district court in its unprecedented action.

CONCLUSION

In this case probable jurisdiction should be noted and the case set for oral argument.

Respectfully submitted,

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APPENDIX

APPENDIX A

Opinion of the District Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1495-73

PETER H. BEER, ET AL., *Plaintiffs,*

v.

UNITED STATES OF AMERICA, ET AL., *Defendants,*

and

JOHNNY JACKSON, JR., ET AL., *Intervenors*

OPINION

James R. Stoner, James R. Treese, Stoner, Treese & Ruffner, of Washington, D. C., Blake G. Arata, City Attorney of New Orleans, La., and Ernest L. Salatich, Assistant City Attorney of New Orleans, La., for plaintiffs.

M. Karl Shurtliff, Walter Gorman, and Nathaniel Fields, Attorneys, Department of Justice, for defendants.

Stanley D. Halpin, Jr., Kidd, Katz & Halpin, of New Orleans, La., Charles E. Cotton, Cotton, Jones & Fazande, of New Orleans, La., Charles E. Williams, III, Jack Greenberg, James M. Nabrit, III, and Eric Schnapper, of New York, New York, and Wiley A. Branton, of Washington, D. C., for intervenors.

Before ROBINSON, *Circuit Judge,* and CORCORAN and WADDY, *District Judges.*

OPINION
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ROBINSON, *Circuit Judge:* The City of New Orleans, Louisiana, seeks a judgment, pursuant to Section 5 of the Voting Rights Act of 1965,[1] declaring that its plan of redistricting for councilmanic elections does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.[2] The plan is the City's current response to the call of its charter for action decennially to assure councilmanic districts approximately equal in population.[3] The City contends that the plan is a projection of legitimate criteria conceived objectively and applied without potential discriminatory consequences. The Government [4] and the intervenors [5] challenge this position on the ground that the plan will operate to dilute the vote of the city's black minority. The intervenors insist additionally that the plan was designed to achieve that very end.

Conformably with Section 5, this three-judge court was convened to hear and determine the controversy.[6] As hereinafter elaborated, we find that the redistricting which the plan proposes will have the effect of abridging the vote of the black citizenry of New Orleans.[7] So concluding, we do not reach the question whether the City's burden [8] of showing a racially nondiscriminatory purpose has been borne.

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[1] Pub. L. No. 89-110, § 5, 79 Stat. 439 (1965), *as amended*, 42 U.S.C. § 1973c (1970), quoted *infra* note 19.

[2] Section 5 authorizes an action by a "State or [political] subdivision" for a judgment incorporating such a declaration. See note 19, *infra*. The present action is brought on behalf of the City by six of the seven members of the City Council. We accept that as a compliance with § 5.

[3] New Orleans, La., Charter art. III, § 3-103(3) (1954), quoted *infra* note 18. See also Part II, *infra*.

[4] The defendants herein are the United States and its Attorney General.

[5] The intervenors are five black citizens registered to vote in New Orleans. Compare *City of Petersburg* v. *United States*, 354 F.Supp. 1021, 1024 (D.D.C. 1972), *aff'd sub nom. Diamond* v. *United States*, 412 U.S. 934 (1973). They are the plaintiffs in *Jackson* v. *Council of City of New Orleans*, Civ. No. 73-1862 (E.D. La. 1973), wherein they seek, on constitutional grounds, reconstruction of the councilmanic districts differently from the concept embodied in the redistricting plan under review. Proceedings in that case have been deferred pending decision herein. See also note 44, *infra*. We allowed the intervention on the defendant side.

[6] See note 19, *infra*. See also *Beer* v. *United States*, Civ. No. 1495-73 (D.D.C. Jan. 4, 1974), at 4a.

I. THE EVOLUTION OF THE REDISTRICTING PROBLEM

A. *Portents of the Problem*

The City of New Orleans embraces all of the territory of Orleans Parish, Louisiana. Lake Pontchartrain furnishes a natural boundary on the north, as the Mississippi River partly does on the south. The Mississippi also separates the southeasterly portion, known as Algiers, from the rest of the city. Travel between the two areas necessitates use either of the single bridge connecting Algiers and downtown New Orleans or the limited ferry service available. A controversy germinated by Algiers' persistent demand for more adequate means of transportation across the Mississippi was to color the redistricting activities leading to this litigation.[9]

The population of New Orleans is 593,471 persons, of whom 267,308 are black.[10] Registered voters in the City numbered 242,416, of whom 83,588 are black. White citizens thus comprise 55.0% of the population and 65.5% of the voters; black citizens make up the remaining 45.0% of the population and 34.5% of the electorate. The large numerical strength of the black community as well as its much weaker proportional voting power were destined to play major roles in the gestation of the central issue in this case.[11]

---

[7] This opinion incorporates our findings of fact and conclusions of law. See Fed.R.Civ.P. 52(a).

[8] See Parts V(B), VII(C), *infra*.

[9] See Part II(A), *infra*.

[10] These statistics, and others utilized in this opinion, are from sources compiled by city authorities.

[11] See Part VI, *infra*.

Although some black families are to be found in most of the principal areas of New Orleans, there is no general geographical blending of black and white residences. The black population is heavily concentrated in a series of neighborhoods extending eastwardly and westwardly through the central part of the City; the areas lying north and south of this belt, with minor exceptions, are overwhelmingly white. This residential pattern looms large in any redistricting effort that would safeguard the black vote against dilution.[12]

Other relevant and important facets of the general situation in New Orleans derive from the scheme pursuant to which its legislative body is elected. That body is the City Council, composed of seven members, of whom five are chosen from single-member districts and the remaining two from the city at large.[13] Four of the five districts extend from the Mississippi River to Lake Pontchartrain, and thus traverse the entire city; the other district is a wedge-shaped portion of the downtown area.[14] Primary elections for the Council are by majority vote,[15] and singleshot voting is prohibited.[16] These phenomena cooperate with others inherent in the plan under consideration to pose the legal threat to the redistricting which the plan would bring about.[17]

B. *Crystallization of the Problem*

Toward the end of 1971, the City Council of New Orleans initiated procedures to redistrict the city for councilmanic elections. The catalyst for this undertaking was a provi-

[12] See Part II, *infra*.

[13] New Orleans, La., Charter art. III, § 3-102 (1954).

[14] See Part VI, *infra*.

[15] La. Rev. Stat. Ann. art. 18, § 358 (1966 supp.).

[16] La. Rev. Stat. Ann. art. 18, § 351 (1966 supp.), quoted *infra* note 164.

[17] See Part VI, *infra*.

sion of the city charter requiring the Council, after each national decennial census, to remake the districts into elective enclaves approximately equal in population.[18] From the beginning, the Council recognized that a plan reorganizing the district boundaries would constitute a suffrage change within the meaning of Section 5 of the Voting Rights Act,[19] requiring federal approval prior to opera-

[18] New Orleans, La., Charter art. III, § 3-103(3) (1954), providing:

> It shall be the mandatory duty of the Council to redistrict the city by ordinance within six months after the official publication by the United States of the population of the City as enumerated in each decennial census. Each councilmanic district shall contain as nearly as possible the population factor obtained by dividing by five the City's population as shown by the decennial census.

[19] Pub. L. No. 89-110, § 5, 79 Stat. 439 (1965), *as amended*, 42 U.S.C. § 1973c (1970), providing:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification,

tion.[20] The saga of the Council's quest for approval is lengthy,[21] and for immediate purposes only the highlights of its endeavors need be recounted.[22]

> prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

As thus made evident, a state or political subdivision is covered by § 5 if it falls within the ambit of § 4 of the Act, 42 U.S.C. § 1973b (1970), quoted in relevant part *infra* note 108. Section 4 intercepts, *inter alia*, states with respect to which it is determined that any one of several enumerated tests or devices was used on November 1, 1964, as a prerequisite to voting, and that less than 50% of the persons of voting age residing therein were registered on that date or actually voted in the presidential election of November, 1964; and the political subdivisions of any such state are likewise intercepted. See note 108, *infra*, and Part III(C), *infra*. Louisiana was brought under § 4 on August 7, 1965, 30 Fed.Reg. 9897 (1965), and so it remains, with the result that New Orleans is within the purview of § 5.

[20] See Part II, *infra*.

[21] From the time of receipt of usable 1970 census figures in late 1971 until shortly prior to the filing of this action in July, 1973, the Council and its research staff engaged extensively in the development of redistricting concepts and proposals, in the drafting and consideration of implementing ordinances, in the conduct of public hearings thereon and in related activities. See Part II, *infra*.

[22] See Part VI(B), *infra*.

On March 2, 1972, the Council enacted Ordinance No. 4796 M.C.S.,[23] which incorporated a scheme of redistricting (Plan I). Acknowledging the coverage of Section 5,[24] the City Attorney, on May 4, 1972, submitted Plan I to the Attorney General of the United States with a view to a determination that the plan "[did] not have the purpose [and] will not have the effect of denying or abridging the right to vote on account of race or color."[25] On January 15, 1973, the Attorney General interposed an objection to Plan I on several grounds.[26] The boundaries of the dis-

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[23] When legislative proposals are first introduced, ordinance calendar (O.C.) numbers are assigned for easy reference during consideration. Ordinances which have been adopted by the Council and acted on by the Mayor are designed "Mayor Council Series" (M.C.S.).

[24] See note 19, *supra*, and Part IV(A), *infra*.

[25] This is the standard for measurement of the validity of New Orleans' redistricting plans. See note 19, *supra*, and Part V, *infra*.

[26] The letter communicating the Attorney General's ruling on Plan I reads:

> This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of City Council Ordinance 4796 M.C.S. which reapportioned the councilmanic districts of the City of New Orleans. This submission was received by this Department on November 15, 1972.
>
> We have given careful consideration to the submitted changes and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts. Moreover, it does not appear that the district lines are drawn as they are because of any compelling governmental need and they do not reflect numeric population configurations or considerations of district compactness or regularity of shape. Under these circumstances we cannot conclude, as we must under the Voting Rights Act, that this plan of reapportionment for the New Orleans Council will not have a

tricts projected, he stated, "appear[] to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts."[27] "[I]t does not appear," he added, "that the district lines are drawn as they are because of any compelling governmental need,"[28] and the lines "do not reflect numeric population configurations or considerations of district compactness or regularity of shape."[29] By force of Section 5, the effect of this objection was to render Plan I inoperable unless and until this court granted approval in accordance with the standard prescribed by that section.[30]

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racially discriminatory effect on voting. Consequently, on behalf of the Attorney General I must interpose an objection.

We have reached this conclusion reluctantly because we fully understand the complexities facing the city in designing a reapportionment plan to satisfy the needs of the city and its citizens and, simultaneously, to comply with the mandates of the federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of theAttorney General is to render unenforceable this reapportionment plan.

In this connection, I wish to bring to your attention our receipt on January 12, 1973, of your City Council Ordinance 5026 M.C.S. which calls for a referendum election on March 20, 1973, on the question of increasing the size of the City Council from seven to nine members. We will review that submission and let you know the Attorney General's determination as soon as possible. However, I also wish to point out that should the increase in the size of the council be approved at the referendum, any districting plan drawn up as a result must also meet the clearance requirements of Section 5.

[27] See note 26, *supra*.

[28] See note 26, *supra*.

[29] See note 26, *supra*.

[30] See note 19, *supra*.

Subsequently, and after attempts to enlarge its membership through a charter amendment were aborted,[31] the Council, on May 3, 1973, passed Ordinance No. 5154 M.C.S., which adopted another redistricting scheme (Plan II). That scheme effected some modifications of Plan I,[32] and on May 10, 1973, the City Attorney submitted it to the Attorney General. A second objection interposed by the Attorney General on July 9, 1973, reiterated the grounds originally advanced and cited additional reasons for his disapproval of Plan II.[33] The Attorney General concluded

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[31] See Part II(B), *infra*.

[32] See Part II(A), *infra*.

[33] The Attorney General's ruling on Plan II reads:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of City Council Ordinance 5154 M.C.S. which reapportioned the councilmanic districts of the City of New Orleans. This submission was received by this Department on May 10, 1973.

We have given careful consideration to the submitted changes and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. In addition we have utilized the information and data which you had previously provided this office in connection with our consideration of Ordinance 4796 M.C.S., pursuant to Section 5 of the Voting Rights Act of 1965.

Our analysis shows that the boundary lines prescribed by Ordinance 5154 M.C.S. appear to effect a dilution of black voting strength in the same manner as did the boundary lines prescribed in Ordinance 4796 M.C.S. to which an objection was interposed on behalf of the Attorney General on January 15, 1973. Under these circumstances we cannot conclude, as we must under the Voting Rights Act of 1965, that this plan of reapportionment for the New Orleans City Council will not have a racially discriminatory effect on voting. Consequently, on behalf of the Attorney General I must interpose an objection to the reapportionment plan outlined in Ordinance 5154 M.C.S.

While we recognize that there are significant differences between the reapportionment plans proposed in Ordinance numbers 4796 and 5154 especially in regard to the number of noncontiguous districts and the population by race of proposed District B, Ordinance 5154 M.C.S. nevertheless combines a

"that the boundary lines prescribed by [Plan II] appear to effect a dilution of black voting strength in the same manner as did the boundary lines prescribed in [Plan I]." [34]

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number of black voters with a larger number of white voters in four of the five districts. Moreover, the district lines in the instant submission do not appear to have been based on any compelling governmental need or to reflect numeric population configurations or considerations of district compactness or regularity of shape.

Our evaluation of Ordinance numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east to west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and the south of the city resulting in districts with more white than black voters.

Although the shape of the submitted districts may have been in part based upon the shape of the seventeen wards in New Orleans, the wards do not of themselves define official boundaries bearing upon the election of or representation by city council members, and adherence to the traditional shape of the wards may not serve to justify the resulting prohibited dilution of black voting strength under Section 5.

We do not mean by this analysis to imply that other reapportionment plans based upon vertical districts will necessarily divide the black neighborhoods in the city to the degree found objectionable here. We have determined, however, that a dilutive result similar to that found in the submitted plan is difficult to avoid when such districts are utilized to the extent found in the submitted plan, and that the extent to which such districts were utilized is not necessary to achieve a successful reapportionment of the city's population.

If you desire any further explanation of the basis for the objection herein, or believe that such further explanation would be helpful in fashioning a redistricting plan which avoids the objectionable features of the submitted plan, please do not hesitate to contact us. Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable this reapportionment plan.

[34] See note 33, *supra*.

He found that "[w]hile . . . there are significant differences between [Plans I and II] especially in regard to the number of non-contiguous districts and the population by race of proposed District B," [35] Plan II, like Plan I, "nevertheless combines a number of black voters with a larger number of white voters in four of the five districts." [36] He further found that the district lines set in Plan II, like those drawn in Plan I, "do not appear to have been passed on any compelling governmental need or to reflect numeric population configurations or considerations of district compactness or regularity of shape." [37]

Continuing, the Attorney General was of the view

> that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east to west progression,[38] the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and the south of the city resulting in districts with more white than black voters.[39]

And "[a]lthough the shape of the submitted districts may have been in part based upon the shape of the seventeen wards in New Orleans," [40] the Attorney General pointed out that "the wards do not of themselves define official boundaries bearing upon the election of or representation by city council members, and adherence to the traditional shape of the wards may not serve to justify the resulting

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[35] See note 33, *supra*.

[36] See note 33, *supra*.

[37] See note 33, *supra*.

[38] See Part I(A), *supra*.

[39] See note 33, *supra*.

[40] See note 33, *supra*, and note 219, *infra*.

prohibited dilution of black voting strength under Section 5."[41]

So, said the Attorney General, while "[w]e do not mean by this analysis to imply that other reapportionment plans based upon vertical districts will necessarily divide the black neighborhoods in the city to the degree found objectional here,"[42]

> [w]e have determined, however, that a dilutive result similar to that found in the submitted plan is difficult to avoid when such districts are utilized to the extent found in the submitted plan, and that the extent to which such districts were utilized is not necessary to achieve a successful reapportionment of the city's population.[43]

The failure to gain the Attorney General's approbation for either plan has left New Orleans unable to conduct councilmanic elections on a redistricted basis.[44] That, in turn, prompted six members of the Council to file this action on July 25, 1973, seeking a judgment declaring that Plan II neither has the purpose nor will have the effect of

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[41] See note 33, *supra*.

[42] See note 33, *supra*.

[43] See note 33, *supra*.

[44] See note 19, *supra*. As we have previously observed in this case, "Section 5 itself enjoined any election utilizing the district boundaries specified in [Plan II]," *Beer* v. *United States, supra* note 6, at 11, and we earlier issued, at the City's unopposed request, a temporary injunction that "spelled out the statutory prohibition against councilmanic elections" based on that plan. *Id.* See also *City of Petersburg* v. *United States, supra* note 5, 354 F.Supp. at 1023-24. We note that in *Jackson* v. *Council of City of New Orleans, supra* note 5, the District Court for the Eastern District of Louisiana has also enjoined temporarily the Orleans Parish Democratic and Republican Executive Committees from taking any steps in the councilmanic electoral process, or in the enforcement of the city charter's reapportionment provision or ordinances enacted pursuant thereto. (order of Aug. 31, 1973).

denying or abridging the right to vote on account of race or color.[45] We have held four days of hearings during which a great deal of evidence of various sorts was introduced by testimony, both live and deposed, stipulations and exhibits. The parties have also briefed the issues extensively, and have presented oral argument.[46] Once these voluminous materials are sifted and organized, the relevant facts appear without material contradiction, and the legal aspects of the New Orleans picture come into sharp focus.

II. The Evolution of the Redistricting Plans

The spadework for plans delineating a redistricting of New Orleans were performed by the Council's research staff, and administrative arm.[47] The two versions which emerged from the Council as Plans I and II were adaptations of staff proposals to the views prevailing among the councilmen. To gain the proper perspective on Plan II, the subject of this litigation, we must examine the evolution of both of the plans.

A. *The Formulation of Plan I*

Armed with the 1970 census figures, guidelines of the Attorney General promulgated pursuant to Section 5,[48] a recent federal court decision on legislative reapportionment in Louisiana,[49] and other data,[50] the research staff devel-

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[45] See note 19, *supra*.

[46] See also *Beer* v. *United States, supra* note 6, at 4-6.

[47] The research staff is charged with the duties of conducting research on legislative, fiscal and administrative matters; of drafting ordinances on requests from councilmen; of keeping the Council informed of the needs and actions of city agencies in areas of legislative concern; and of supervising overall the Council's housekeeping chores.

[48] 28 C.F.R. pt. 54 (1973).

[49] *Taylor* v. *McKeithen*, 333 F.Supp. 452 (E.D.La. 1971), *vacated and remanded*, 407 U.S. 191 (1972).

[50] See notes 51-59, *infra*.

oped numerous redistricting concepts, some of which evolved into concrete plans for consideration by the Council. A group of several factors exerted the primary influence on the staff's determinations leading to the district boundaries set by the submission which ultimately became Plan I.

The staff gave principal attention to the city charter's demand for five councilmanic districts of equal population.[51] Beyond this, the staff noted instructions of the City Attorney,[52] supplementing the Attorney General's guidelines, to avoid lines which would divide concentrations of minority voters and thereby reduce their voting strength.[53] The staff also undertook to observe, as far as possible, traditional political boundaries—ward and precinct lines[54]—and natural geographic boundaries—the Mississippi River and Lake Pontchartrain, as well as major streets and canals. Yet another effort was to steer clear of boundaries which would place two or more incumbent councilmen in the same district.[55] And the staff endeavored to keep the councilmanic districts compact and geographically integral.[56]

The complex question of Algiers, and the inseparable dispute over additional bridging of the Mississippi River, were also instrumental in shaping Plan I. Algiers, as we have mentioned, is disjoined by the Mississippi from downtown New Orleans, and only one bridge spans the river from Algiers to downtown New Orleans.[57] The bridge is the principal corridor for needed access by the residents of

[51] See note 18, *supra,* and Part VII, *infra.*

[52] The City Attorney prepared a digest of the Attorney General's guidelines and court decisions to assist the staff in its redistricting activities.

[53] See Part IV(C), *infra.*

[54] See note 219, *infra.*

[55] See Part VI(C), *infra.*

[56] See Part VI(C), *infra.*

[57] See text *supra* at note 9.

Algiers to the remainder of the city; an infrequent ferry service is of little use to the daily commuter. Algiers is a high-growth residential area, and its citizens do not fully share with other inhabitants of the city the same political and economic concerns.[58] Transportation across the river to and from Algiers is dear to the people living there, and is a much debated issue in New Orleans.[59]

The mix of the above elements produced a proposal to adopt the redistricting scheme which was to become Plan I. The proposal, O.C. No. 5194, was presented for community views at three public hearings. The plan envisioned the division and distribution of the territory of Algiers among three different councilmanic districts, and to this the residents of Algiers voiced strong objection. Several black groups vigorously opposed the plan because, by their estimate, it diluted the black vote;[60] in an effort to increase the potential for black representation on the Council,[61] they sought to restructure the plan to provide for as many as eleven single-member districts. Nonetheless, with slight modifications, the proposal passed the Council as Plan I,

[58] Although residents on both sides of the Mississippi have a common interest in the river traffic, physical separation from the remainder of the city has been responsible for a feeling of independence among those who live in Algiers.

[59] The existing bridge connects Algiers and downtown New Orleans. Uptown residents have argued that construction of a new bridge would turn a basically residential area into a main thoroughfare; downtown residents express concern that a second bridge would add more traffic congestion to an already overburdened area. The residents of Algiers have vigorously urged a new bridge, irrespective of location, as a necessary means of alleviating pressures on the limited facilities existing, and of accommodating the growing transportation needs of a burgeoning population. Although the City Council is not authorized to construct any new bridges or change the ferry schedules, it is responsible for communicating the views of its constituents to the State Department of Highways, the implementing agency.

[60] See Part VI, *infra.*

[61] See Part II(B), *infra.*

becoming Ordinance No. 4796 M.C.S., only to be disapproved by the Attorney General.[62]

B. *Impediments to Black Suffrage*

At the hearings on Plan I, black citizens' groups advocated both an increase in the size of the City Council and the elimination of at-large elections of councilmen. The goal of this approach was greater opportunity for black voters to take part meaningfully in the selection of those who are to sit on the Council. Witnesses claimed that the existing scheme—five councilmen from districts and two at large—perpetuated limitations on the ability of the black voting population to engage effectively in the choice of councilmanic membership. In recounting from hard personal experience the barriers to full political participation by minorities, black opponents of Plan I cited a variety of restraints which we find quite revealing.

As the prime example of past discriminatory practice, the expansionists stressed the long history of racial segregation in education, housing, public facilities and virtually all facets of everyday life in New Orleans.[63] With special reference to suffrage, witnesses attested to past voting practices which worked to exclude blacks from the registration rolls and to stifle minority participation in elections.[64] Even until recent times, they reminded listeners, strict proof of residency of specified duration, and confinement of registration to one location—the city hall—had persisted as obstacles to black would-be voters.[65]

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[62] See Part I(B), *supra*.

[63] See Part VII(C), *infra*.

[64] See Part VII(C), *infra*.

[65] Since the present Council assumed office in 1970, some efforts have been made to get registrars out onto local college campuses and into neighborhood fire stations near election time. It was not, however, until after the filing of this suit that registrars made concerted efforts to regularly move into the community to facilitate the qualification of eligible minority citizens.

Testimony at the hearings further indicated that the candidate-selection process preceding councilmanic campaigns created additional problems for New Orleans' black citizens. To maximize citywide exposure, aspirants for councilmanic office are often invited to join mayoral tickets and to campaign with mayoral candidates as a team, and invitees are the personal choices of those candidates.[66] Endorsements from local organizations—the white political power structure—are another component in the selection. Black citizens running for office are hampered both by their generally more individualistic political philosophies and their more limited financial resources.[67] No black person has ever won election to the Council.

To overcome the barriers of endorsements and campaign assistance, most black candidates have run independent—albeit losing—campaigns, focusing their appeal on the black community. In recent years, the only four successful black candidates for citywide office in New Orleans were recipients of support from white organizations [68] or white candidates.[69] As suggested at the hearings, the achievements of

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[66] An invitation to participate on a ticket with a mayoral candidate has the effect of reducing campaigning costs since each member of the ticket contributes some of his or her campaign funds to the ticket in order to get the benefit of citywide publicity and exposure.

[67] Not only are candidates expected to espouse a philosophy which is palatable to the organization, but they are also expected to assist the organization by financial contributions to defray the cost of getting out the vote for its endorsees.

[68] Black political organizations did not come into existence in New Orleans until the late 60's. The formation of these organizations was precipitated by the significant increase in black voter registration after passage of the Voting Rights Act of 1965. These organizations have hoped to serve as bases for more active minority participation in the electoral process and as a source of support for black aspirants for political office.

[69] A black candidate for the Louisiana Court of Appeals ran unopposed when his opponent withdrew for personal reasons. Another black candidate, who won in his bid for the Criminal

these candidates cannot be equated with open access to the voting booth and equal weight of the vote in the count.[70]

According to the expansionists, the need for increased representation on the City Council was exacerbated by the unresponsiveness of city officeholders to the wishes and wants of the black minority.[71] Indicia of the failure of the all-white City Council to react favorably to the concerns of the black community were legion. Advocates of improved municipal services received a deaf ear from the Council more often than not. Efforts to pave streets, maintain parks and improve recreational areas in black neighborhoods have more lately been bolstered, not by improved attitudes on the part of council members, but by pressure to utilize funds provided by federal programs. Good faith efforts of some public officials have brought assistance to black constituents, but examples are relatively scarce.

The white and black communities of New Orleans are polarized in political matters, and that is perhaps best manifested by the incidence of bloc voting in New Orleans. The record documents a history of bloc voting substantially along racial lines in both white- and black-occupied areas.[72] The results of modern elections which black candidates entered, or in which issues of special concern to black voters are aired, demonstrate a strong trend toward overwhelming support for black candidates and "black" issues in black neighborhoods, with minimal

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District Court, had as his campaign co-chairmen the then Governor of Louisiana and the Mayor of New Orleans. Still another black candidate, for the school board, ran successfully on a ticket with a past president of the board. Since this litigation began, a black candidate was elected clerk of the Criminal District Court with the Mayor's support.

[70] See Part VII(C), *infra*.

[71] See Part VII(C), *infra*.

[72] See Part VII(C), *infra*.

support in white neighborhoods, and vice versa.[73] Speakers at the hearings asserted that where black voters constitute a minority of the total voting population, as is the case in New Orleans, the negative impact of bloc voting would further impair their ability to participate effectively in political activities.

To this array of factors delimiting black access to the political process, the expansionists added certain structural elements as further proof that the black vote would continue to suffer if the City Council remained small in membership and the at-large seats were preserved. In New Orleans two such elements, both of statutory origin, are of particular significance. The expansionists attacked the majority-vote requirement[74] and the anti-singleshot provision[75] as primary-election mechanisms which depreciate the ballot of the black voter in council-manic elections. The majority-vote rule obscures a black candidate's chances of winning even if he were to receive all of the black vote.[76] Without the possibility of a plurality victory by his candidate, the minority voter's influence on the election results is sharply reduced. The anti-singleshot law provides that if two or more offices are

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[73] Dominance of the Democratic Party in New Orleans has traditionally made success in Democratic primaries tantamount to victory in general elections. The only notable exception in recent years was a race in 1970 for a New Orleans seat in the state legislature. A black candidate won the Democratic nomination, but a white Republican who qualified against him was elected in the general election; and so it was that for the first time in this century the district from which they ran was represented by a Republican. The results of the election were plainly attributable to bloc voting, with predominantly white wards, traditionally Democratic in registration, supporting the white Republican candidate over his black Democratic opponent.

[74] La. Rev. Stat. Ann. art. 18, § 358 (1966 supp.).

[75] *Id.* at § 351, quoted *infra* note 164.

[76] See Part VII (C), *infra*.

to be filled—as, for example, the two at-large seats on the City Council—a voter must vote for candidates equal in number to the number of offices at stake, or else have his ballot invalidated with respect to all of those offices.[77] So, although a voter wishes to support but one aspirant for an at-large seat on the Council, he must cast a vote against his candidate in order to have his vote for that candidate counted.

The expansionists' arguments won a limited victory temporarily. Subsequent to the public hearings, the City Council approved ordinances offering the voters of New Orleans alternatives to a seven-member legislative body and two of them were successively submitted to separate citywide referenda. The first, Ordinance No. 4923 M.C.S., called for an expansion to eleven members, nine from districts and two at large; the second, Ordinance No. 5026 M.C.S., specified an expansion to nine members, seven from districts and two at large.[78] Although neither ordinance embodied the central proposal advanced by black spokespersons—elimination of at-large voting, and election of all councilmen from single-member districts, as an essential feature of any expansion—both ordinances were supported by the black vote ostensibly on the theory that enlargement of council membership in any form was superior to the existing scheme, and raised some hope for fairer minority representation. Neither proposal received any support from white political organizations, however, and both were eventually defeated by the preponderant white vote.

C. *The Formulation of Plan II*

Following the rejection by the electorate of plans for expansion of the City Council, and principally in response to

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[77] See Part VII(C), *infra.*

[78] Of a total of five expansion proposals adopted by the Council, only these two reached a referendum.

vociferous outrage over the tripartite split of Algiers in Plan I, a member of the Council directed the research staff to redraw that plan to incorporate all of Algiers into one district and to readjust the boundaries of other districts accordingly. This the staff did and one of the products of its efforts ultimately became Plan II. The staff considered the same criteria it had utilized in promulgating Plan I,[79] but the Algiers question appears to have been the overriding concern in the restructuring of districts. Very importantly, the factors which persuaded the Attorney General to disapprove Plan I[80] did not undergo reconsideration by the staff in the formulation of the concepts leading to Plan II. The staff commenced and completed its work on Plan II while Plan I was under review by the Attorney General and before he interposed his objection to it.[81]

In toto, four new schemes revising Plan I[82] were submitted by the staff and considered by the Council. In the meantime, the Attorney General rejected Plan I,[83] but it does not appear that the Council addressed specifically the flaws which the Attorney General identified in that version. The eventual Plan II—relatively little more than a modification of Plan I placing Algiers in a single district—was aired at two additional public hearings and passed by the

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[79] See Part II(A), *supra.*

[80] See note 26, *supra,* and accompanying text.

[81] The staff transmitted its proposals in November, 1972. The Attorney General did not announce his ruling on Plan I until January 15, 1973. See Part II(C), *infra.*

[82] One alternative was a modification of Plan I which retained the configurations of two districts, changed the boundaries of the other three districts, and placed all of Algiers in one district. In addition, it placed two incumbent councilmen in a single district. The remaining alternatives were variations on that scheme, adjusting the lines of two of the districts.

[83] See Part I(B), *supra.*

Council with only a minor amendment— the shifting of a precinct from one district to another. Again the Attorney General registered an objection in the view that the second plan, as had the first, failed to meet the test of Section 5, [84] and that left the fate of Plan II to the courts. [85]

III. The Historical Evolution of Section 5

A. *The Constitutional Background*

Section 1 of the Fifteenth Amendment pledges that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." And so, "without further legislative specification," [86] Section 1 "invalidate[s] state voting qualifications or procedures which are discriminatory on their face or in practice." [87] The Fifteenth Amendment, however, does not rest protection of the right to vote entirely on the majestic pronouncement made by Section 1, but in Section 2 provides that "[t]he Congress shall have the power to enforce this article by appropriate legislation." "This power, like all others vested in Congress, is complete in itself, may be exercised to the utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." [88]

The wisdom of coupling with the guaranty of Section 1 the broad enforcement authority conferred by Section 2 was fully demonstrated by the experience accumulated

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[84] See Part I(B), *supra*.

[85] See note 19, *supra*. See also *Beer* v. *United States*, *supra* note 6, at 6-10.

[86] Section 1 has uniformly been construed as self-executing. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 325 (1966).

[87] *Id.*, and see cases there cited.

[88] *Id.* at 327, quoting *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 196 (1824).

over the 95 years following ratification of the Fifteenth Amendment in 1870. For notwithstanding the self-executing nature of Section 1 and its enforceability in the courts, the promise it made far outran actual realization. The grandfather clause, [89] the white primary, [90] the discriminatory challenge [91] and the black gerrymander, [92] though ultimately declared illegal, attested the multiform opposition to racial equality in voting persistent in some sections of the country. Among the subtler, but certainly not the feebler, devices suppressing black suffrage were literacy tests discriminatorily conceived and administered. [93] In the wake of these techniques was widespread disenfranchisement of black citizens in areas where the black population was large. [94]

That was the sad reality in 1965, despite the best efforts of those who had advocated voting equality in the courts and others who had pushed for stronger voting rights laws in Congress. Another reality, equally stark, was that each of those approaches had suffered from its own difficulties. Post-Civil War statutes on the subject had proven ineffective, and modern federal legislation had aimed at facilitating case-by-case litigation of suffrage dis-

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[89] See *Guinn* v. *United States*, 238 U.S. 347, 364-65 (1915); *Myers* v. *Anderson*, 238 U.S. 368, 382 (1915); *Lane* v. *Wilson*, 307 U.S. 268, 275 (1939).

[90] See *Nixon* v. *Condon*, 286 U.S. 73, 89 (1932); *Nixon* v. *Herndon*, 273 U.S. 536, 540 (1927). Compare *Grovey* v. *Townsend*, 295 U.S. 45, 54 (1935) with *Smith* v. *Allwright*, 321 U.S. 649, 664-65 (1944); and *Terry* v. *Adams*, 345 U.S. 461, 470 (1953).

[91] See *United States* v. *Thomas*, 362 U.S. 58, 59 (1960).

[92] See *Gomillion* v. *Lightfoot*, 364 U.S. 339, 347 (1960).

[93] See *Schnell* v. *Davis*, 336 U.S. 933 (1949); *Alabama* v. *United States*, 371 U.S. 37 (1962); *Louisiana* v. *United States*, 380 U.S. 145, 153 (1965).

[94] See H.Rep. No. 439, 89th Cong., 1st Sess. 8-16 (1965); *South Carolina* v. *Katzenbach*, *supra* note 86, 383 U.S. at 313.

crimination.[95] Attempts to enforce the constitutional mandate entailed numerous lawsuits, which all too frequently became individually onerous and protracted.[96] Beyond that, adjudications removing one obstacle to equality ofttimes went for naught in the face of substitution of another obstacle, or even of defiance or evasion of court orders.[97] The net of it all was relatively little gain in black voting.[98] As the House Judiciary Committee was to observe in 1965, "[t]he historic struggle for the realization of this constitutional guarantee indicates clearly that our national achievements in this area have fallen far short of our aspirations."[99]

B. *The Voting Rights Act*

The Voting Rights Act of 1965 mounted the Nation's most formidable legislative assault upon the massive problem of voting discrimination. As the history of the

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[95] See *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 313.

[96] See H.Rep. No. 439, 89th Cong., 1st Sess. 9-11 (1965); *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 314-15.

[97] See *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 314.

[98] "Another measure of the effectiveness of existing civil rights statutes and their case-by-case enforcement is to be found in voter registration statistics in those areas where Federal litigation has been previously concentrated. For example, in Alabama, the number of Negroes registered to vote has increased by only 5.2 percent between 1958 and 1964 to 19.4 percent; in Mississippi, approximately 6.4 percent of voting age Negroes were registered in 1964 compared with 4.4 percent in 1954; and in Louisiana, the increase in Negro registration has been imperceptible—from approximately 31.7 percent in 1956 to approximately 31.8 percent of the eligible Negroes registered as of January 1, 1965. Meanwhile, the percentage of registered white voters in Louisiana is 80.2 percent." H.Rep. No. 439, 89th Cong., 1st Sess. 10 (1965). See also *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 313.

[99] H.Rep. No. 439, 89th Cong., 1st Sess. 8 (1965).

Act discloses, "Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution."[100] And as the Act itself reveals, "Congress concluded that the unsuccessful remedies which it prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment."[101]

The 1965 congressional approach to this task was marked by renewed determination and a changed philosophy. The Voting Rights Act "implemented Congress' firm intention to rid the country of racial discrimination in voting."[102] It "was designed by Congress to banish the blight of racial discrimination in voting, which [had] infected the electoral process in parts of our country for nearly a century."[103] It was "drafted to make the guarantees of the Fifteenth Amendment finally a reality for all citizens;[104] it "was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race."[105] For "Congress realized that existing remedies were inadequate to accomplish this purpose and drafted an unusual, and in some aspects a severe, procedure for insuring that States

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[100] *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 309.

[101] *Id.*

[102] *Allen* v. *State Bd. of Elections,* 393 U.S. 544, 548 (1969).

[103] *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 308. See also *id.* at 315.

[104] *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 556. See also *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 308, 309.

[105] *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 565. See also *Perkins* v. *Matthews,* 400 U.S. 379, 385 (1971); *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 335.

would not discriminate on the basis of race in the enforcement of their voting laws." [106]

C. *Sections 4 and 5*

A reading of the Act in its entirety tells how extensively Congress pursued these objectives. We need not canvass all provisions of the Act, [107] for our immediate concern is Section 5. We must, however, examine that section in light of Section 4, with which Section 5 and other remedial provisions of the Act are closely related.

Section 4 automatically suspends compliance with any "test or device" as a precondition to voting in any state or political subdivision "which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November, 1964." [108] The coverage of Section 4 has been extended to

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[106] *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 556.

[107] See W. Christopher, *Constitutionality of the Voting Rights Act of 1965*, 18 Stan. L. Rev. 1 (1965); A. Derfner, *Racial Discrimination and the Right to Vote*, 26 Vand. L. Rev. 523, 547-52 (1973); Note, *Voting Rights Act of 1965*, 1966 Duke L. J. 463.

[108] "(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the

any other state or political subdivision with respect to which similar determinations are made as to the year

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ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

"An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

"If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

"(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968,

1968.[109] The words "test or device" are defined as "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." [110] A state or local unit thus covered may reinstate the test or device only by bringing an action in this court for a declaratory judgment and obtaining a determination "that no such test or device has been used during the ten years preceding the filing of

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or that less than 50 per centum of such persons voted in the presidential election of November 1968.

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

"(c) The phrase 'test or device' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

"(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future." Voting Rights Act of 1965, § 4, *as amended,* 42 U.S.C. § 1973b (1970).

[109] *Id.* § 4(b), *as amended,* 42 U.S.C. § 1973b(c) (1970), quoted *supra* note 108.

[110] *Id.* § 4(c), *as amended,* § 1973b(c) (1970), quoted *supra* note 108.

the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color." [111]

It is to the states and political subdivisions which are covered by Section 4 that the prohibition of Section 5 applies. Section 5 provides that no person shall be denied the vote for failure to comply with "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect" in the covered state or subdivision on November 1, 1964, or November 1, 1968, as the case may be, unless and until (a) the change is submitted to the Attorney General and he interposes no objection, or (b) in an action instituted in this court, a judgment is obtained declaring "that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." [112]

The reason for including the proscription of Section 5 in the Act is simple. As the Supreme Court has explained, "Congress knew that some of the States covered by § 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kind for the sole purpose of perpetuating voting discrimination in the face of adverse federal decrees." [113] Moreover, as the Court continued, "Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the the Act itself." [114] So, said the Court, "[u]nder the compulsion of these unique circumstances, Congress re-

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[111] *Id.* § 4(a), *as amended,* 42 U.S.C. § 1973b(a) (1970), quoted *supra* note 108. See *Gaston County* v. *United States,* 395 U.S. 285 (1969).

[112] See note 19, *supra.*

[113] *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 335.

[114] *Id.*

sponded," through the enactment of Section 5, "in a permissibly decisive manner."[115] The decisiveness of that response is apparent both from the wide coverage that Section 5 was given and from the caliber of the showing prerequisite to removal of its bar.

IV. The Scope of Section 5

A. *Coverage*

Since August 7, 1965, the State of Louisiana, in consequence of appropriate administrative determinations, has fallen within the ambit of Section 4 of the Voting Rights Act.[116] Since the State has not exempted itself from the coverage of Section 4. the City of New Orleans remains subject to the commands of Section 5.[117] The latter section requires clearance either by the Attorney General or by this court of "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect" on November 1, 1964.[118] The redistricting plan which is the subject of this litigation will change a number of boundaries of the five councilmanic districts in New Orleans from what they were on that date. The Attorney General has interposed an objection to the plan, and the question is whether, on the evidence tested by the standard enunciated in Section 5, the plan merits our approval.

Indubitably, the enactment of the ordinance adopting Plan II triggered Section 5 into operation. As the Supreme Court has admonished, "Congress intended that the Act be given 'the broadest possible scope' to reach 'any state enactment which altered the election law of a covered State in even a minor way' "; [119] "all changes no matter how small [are to] be subjected to § 5 scrutiny."[120] The reconstitution of councilmanic districts which the plan envisions is clearly a change of a "standard, practice, or procedure with respect to voting."[121] As such, it falls plainly within the purview of Section 5.[122]

But to say that Section 5 is actuated by a plan proposing such a change is not to suggest that Section 5 demands disapprobation of the plan. It is to say that the plan must be disapproved unless the evidence warrants a judgment declaring that it "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[123] That is the question which we are summoned to decide in this case.

B. *Relationship to the Fifteenth Amendment*

In considering whether the New Orleans redistricting plan passes muster under Section 5, we must bear in mind

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[115] *Id.* See, to the same effect, *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 548; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 389.

[116] 30 Fed. Reg. 14505 (1965).

[117] See Voting Rights Act of 1965, §§ 4 and 5, *as amended,* 42 U.S.C. §§ 1973b and 1973c (1970), quoted *supra* notes 102 and 19. See also *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 394-96; *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 554-56.

[118] See note 19, *supra.*

[119] *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 387, quoting *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 566, 567. See also *Georgia* v. *United States,* 411 U.S. 526, 532 (1973).

[120] *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 568. See also *Georgia* v. *United States, supra* note 119, 411 U.S. at 532; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 387.

[121] *Georgia* v. *United States, supra* note 119, 411 U.S. at 531-35; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 388.

[122] Compare *Georgia* v. *United States, supra* note 119, 411 U.S. at 531-35; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 387-95; *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 550-53, 569-71.

[123] See note 19, *supra.* See also *Georgia* v. *United States, supra* note 119, 411 U.S. at 529; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 383-85; *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 558-59; *City of Petersburg* v. *United States, supra* note 5, 354 F.Supp. at 1027.

the relationship of the Voting Rights Act to the Fifteenth Amendment. The Act, in its preamble, is declared to be legislation "[t]o enforce the fifteenth amendment to the Constitution of the United States, and for other purposes."[124] In Section 2 the Act, similarly to the Amendment, specifies that "[n]o voting qualification or prerequisite to voting, or standard, or practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."[125] The legislative history of the Act establishes the full and firm allegiance of its own objectives with the goals of the Amendment.[126] The Supreme Court summed it up when it observed that "[t]he Act was drafted to make the guarantees of the Fifteenth Amendment finally a reality for all citizens."[127]

This close relationship, so true of the Act as an entirety, is also true of Section 5. That section "essentially freezes the election laws of the covered States unless a declaratory judgment is obtained in [this court] holding that a proposed change is without discriminatory purpose or effect."[128] Like other provisions of the Act, Section 5

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[124] 79 Stat. 437 (1965). See also H.Rep. No. 439, 89th Cong., 1st Sess. 6 (1965).

[125] 42 U.S.C. § 1973 (1970).

[126] See Part III(B), *supra*.

[127] *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 556. See also *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 308, 309. "Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly '[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.'" *Id.* at 337.

[128] *Georgia* v. *United States, supra* note 119, 411 U.S. at 538.

was passed,[129] and its validity has been sustained,[130] as an appropriate exercise of congressional power to enforce the mandate of the Fifteenth Amendment.[131] Section 5 proceeds to accomplish that mission through a substantially similar mandate of its own. The Amendment, in Section 1, provides in part that "[t]he right . . . to vote shall not be *denied* or *abridged* by . . . any State on account of race [or] color";[132] in parallel language, Section 5 permits judicial approval of a changed voting procedure only if it "does not have the purpose and will not have the effect of *denying* or *abridging* the right to vote on account of race or color."[133] Judicial clearance of a new voting rule under Section 5 thus exacts "a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment."[134]

C. *Dilution of the Right to Vote*

The clearest case of violation of the Fifteenth Amendment right arises, of course, when a would-be voter is barred from exercising it;[135] and there is no indication that the redistricting plan proposed for New Orleans will

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[129] *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 308-16, 334-35.

[130] *Georgia* v. *United States, supra* note 119, 411 U.S. at 535. See also *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 556; *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 323-37.

[131] See Part III(B), *supra*.

[132] Emphasis added.

[133] See note 19, *supra* (emphasis added).

[134] *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 335.

[135] See cases cited *supra* notes 89-93. "The abstract right to vote means little unless the right becomes a reality at the polling place on election day." *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 387.

have that effect upon any voter. But both the Fifteenth Amendment and the Voting Rights Act forbid abridgment of the right to vote as well as its outright denial,[136] and any doubt as to what abridgment of the right encompasses may readily be dispelled. The Supreme Court held in *Reynolds* v. *Sims,* [137] a reapportionment case, and has later consistently repeated in cases arising under the Act,[138] that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." [139] As the Court has stated it another way with specific reference to the Act, "[t]he right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot." [140] And the Court has declared that by passage of the Act "Congress intended to adopt the concept of voting articulated in *Reynolds* v. *Sims,* . . . [to] protect Negroes against a dilution of their voting power." [141]

Our investigation as to whether the redistricting plan before us has a dilutive effect on the black vote in New Orleans is greatly assisted by a pause to briefly examine theory and practice prevalent in legislative reapportionment cases, wherein essentially the same problem has arisen. It is now settled that "[t]he Equal Protection Clause [of the Fourteenth Amendment] demands no less than substantially equal state representation for all

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[136] See text *supra* at notes 125-33.

[137] 377 U.S. 533 (1964).

[138] See *Georgia* v. *United States, supra* note 119, 411 U.S. at 532; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 388; *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 569.

[139] *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 555.

[140] *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 569.

[141] *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 390, quoting *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 588 (separate opinion of Harlan, J.).

citizens, of all places as well as of all races." [142] When the same number of representatives on the same body are elected from districts having disparate populations, the individual votes of citizens in the more heavily populated districts obviously have less weight than the votes of those in the districts more sparsely populated. For state elections conducted on the basis of districting, the general requirement is "substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." [143]

Our commission in this case does not extend to this kind of malapportionment, but to conditions that might detrimentally affect the franchise on the basis of race or color. [144] Sometimes, however, in reapportionment situations devoid of any vitiating deviation from population equality, the claim is made that something in the voting scheme—in the decided cases, a multimember district or at-large voting—operates to sap the voting strength of racial or other minorities within the district. [145] The methodology of resolving such claims is instructive.

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[142] *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 568. The cases supporting this proposition are legion. See, *e.g., Gaffney* v. *Cummings,* 412 U.S. 735 (1973); *Mahan* v. *Howell,* 410 U.S. 315 (1973); *Abate* v. *Mundt,* 403 U.S. 182 (1971); *Swann* v. *Adams,* 385 U.S. 440 (1967); and cases cited at note 145, *infra.*

[143] *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 579. Since we are concerned with but one branch of the "one man, one vote" doctrine, we do not embark upon a consideration of its numerous ramifications.

[144] See *Beer* v. *United States, supra* note 6, at 6-10.

[145] See *White* v. *Regester,* 412 U.S. 755, 765-70 (1973); *Whitcomb* v. *Chavis,* 403 U.S. 124, 143-44, 149 (1971); *Burns* v. *Richardson,* 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey,* 379 U.S. 433, 439 (1965); *Turner* v. *McKeithen,* No. 71-2221 (5th Cir. Dec. 28, 1973); *Zimmer* v. *McKeithen,* 485 F.2d 1297 (5th Cir. *en banc* 1973); *Howard* v. *Adams County Bd. of Supervisors,* 453 F.2d 455, 457 (5th Cir.), *cert. denied,* 407 U.S. 925 (1972).

The Supreme Court has held that in such cases "the plaintiff['s] burden [146] is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents of the district to participate in the politicial processes and to elect legislators of their choice." [147] Thus, as the Fifth Circuit has pointed out, "although population is the proper measure of equality in apportionment, . . . access to the political process and not population [is] the barometer of dilution of minority voting strength." [148] The determination demanded in such cases is to be made on "the totality of the circumstances," [149] and among the factors pertinent to the question whether a minority group enjoys meaningful access "are the continuing effects of past discrimination on the minority group's ability to participate in the political process, the opportunity for the minority group to participate in the candidate selection process, the responsiveness of elected officials to the particular concerns of the minority group, and the strength of the state interest in multi-member or at-large voting." [150]

Our examination of New Orleans' redistricting, then, may proceed on several fundamental premises. The tendered issues are whether the City's Plan II will have the purpose or effect of abridging the right to vote because of

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[146] The burden of proof which the Court speaks of is the burden in cases wherein relief is sought on constitutional grounds. As to the burden of proof in § 5 cases, see Part VI(B), *infra*.

[147] *White* v. *Regester*, *supra* note 145, 412 U.S. at 766.

[148] *Zimmer* v. *McKeithen*, *supra* note 145, 485 F.2d at 1303.

[149] *White* v. *Regester*, *supra* note 145, 412 U.S. at 769. See also *Turner* v. *McKeithen*, *supra* note 145, at 7; *Zimmer* v. *McKeithen*, *supra* note 145, 485 F.2d at 1305.

[150] *Turner* v. *McKeithen*, *supra* note 145, at 6.

race or color. [151] The decision necessitates prior investigation to ascertain whether the plan will attenuate, in terms of power or weight, the black vote in councilmanic elections. [152] The measure of the plan's validity is equality of opportunity, and the cruicial inquiry is whether the plan leaves black citizens at liberty to participate in the electoral processes on the same plane with white citizens. [153] That assessment, toward which we now proceed, is to be made upon careful consideration of all relevant circumstances. [154]

V. The Legal Problem

To fulfill the mandate of Section 5, we repeat, it must be shown that the redistricting plan in question does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. [155] The burden of that showing rests upon New Orleans. [156] Our task is to determine whether that burden has been discharged, [157] and that is the only function we have with respect to the controversy at hand. [158]

A. *The Prime Factors*

Several prominent factors, proceeding from quite different sources, converge to intensify the problem confronting us. One is the size and voting strength of the black com-

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[151] See text *infra* at Part V.

[152] See text *infra* at Part VI.

[153] See text *infra* at Part VII.

[154] See text *infra* at Part V(A).

[155] See Parts III(B), (C), IV(B), (C), *supra*.

[156] We discuss the burden of proof in § 5 cases in Part VI(B), *infra*.

[157] See *Beer* v. *United States*, *supra* note 6, at 6-10.

[158] *Id.*

munity in New Orleans,[159] which expectably would assure the prospect of fairly substantial black representation on the City Council. At the same time the black minority, which numerically is nearly half of the total population, commands only slightly more than one-third of the vote, a circumstance that beckons inquiry as to why that is so. Another factor of great moment is the residential pattern prevalent in the city.[160] When the five councilmanic districts are constructed vertically—by dividing lines drawn northwardly and southwardly across the entire city—it is difficult to avoid the result that each district will combine a segment of the east-west black belt with segments of contiguous white areas. Rather, the likely result is all or nearly all districts with a preponderance of white inhabitants and voters.[161]

Other vital factors are important elements of the political machinery by which the City Council is chosen. Five of the seven members are elected from the five single-member districts and the other two from the city at large.[162] Nomination as a candidate for election requires a majority of the vote cast at a primary,[163] and singleshot voting in

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[159] See Part I(A), *supra*.

[160] See Part I(A), *supra*.

[161] Compare the analysis of the Attorney General, Part I(B), *supra*, and note 33, *supra*. We do not suggest that vertically-drawn district lines may not appropriately be incorporated into a redistricting scheme for New Orleans, nor that only an east-west configuration could satisfy Section 5. It is not within our power to draw new lines; our function extends merely to identification of the visible defects in the plan as submitted which work to dilute the black vote.

[162] New Orleans, La., Charter art. III, § 3-102 (1954). See Part II(B), *supra*.

[163] La. Rev. Stats. Ann. art. 18, § 358 (1966 supp.)

primaries is not allowed.[164] These features of the electoral process operate conjunctively to handicap a racial minority, wherever and whenever it is also a voting minority, from securing nomination of its candidates if the voting proceeds strictly along racial lines. In New Orleans it usually does,[165] and nomination in the Democratic primary is usually tantamount to victory in the general election.[166]

It is in this general context, further ramified by additional considerations, that the redistricting proposed by Plan II must be examined. The plan changes a number of boundaries of the five preexisting vertical councilmanic districts, but leaves the districts just as vertical as they were before. When the plan is superimposed upon the housing pattern prevalent in New Orleans, the statistical picture in the five districts emerges as follows:

District	Population			Registered Voters		
	Total	Black	%	Total	Black	%
A	117,901	36,665	29.1	57,387	12,964	22.6
B	118,678	76,109	64.1	39,870	20,976	52.6
C	119,023	42,651	35.8	49,756	11,606	23.3
D	118,337	51,447	43.5	49,505	18,223	36.8
E	119,532	60,437	50.6	45,898	19,819	43.2
Total	593,471	267,308	45.0	242,416	83,588	34.5

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[164] *Id.* art. 18, § 351 (1966 supp.), which reads:

> Whenever in any political district or political subdivision there are two or more offices of the same kind or character to be elected, . . . each elector shall vote for as many candidates as there are places to be filled. Whenever an elector shall vote for a lesser number of candidates than there are places to be filled, the ballot shall not be counted for any one of the plural candidates voted for thereon, but shall be considered and counted as if no one of the plural candidates had been voted for. . . .

[165] See Part II(B), *supra*.

[166] Compare note 73, *supra*.

Thus only in one district—District B—would there be a majority of black voters, and a slim majority at that. Two seats on the Council would be filled by the at-large vote, and the majority- and multiple-vote requirements for primaries would remain.

B. *Purpose of the Plan*

On the issue of the purpose—as to black voting—that engendered the redistricting scheme projected by Plan II, New Orleans has submitted extensive testimony by six members of its City Council and three members of the Council's research staff as to the factors they respectively considered and evaluated in the course of the formulative process. Credible evidence supports the City's assertion that compliance with the call of the city charter for councilmanic redistricting after decennial censuses [167] was the prime motivation in the evolution of the plan. In sum, the City asserts that the factors instrumental in the shaping of Plan II were population, boundaries—natural, historical and political, compactness of districts and avoidance of minority-vote dilution.[168] The City insists that the planners were not prompted by any desire to discriminate against any group of residents on the basis of race or color in the promulgation of the plan.

The Government concedes that the bare statistical output of Plan II,[169] taken in a vacuum, does not necessarily establish that the plan is racially discriminatory in aim. To rebut the City's evidence, the Government, joined by the intervenors, suggests that the planners were unpardonably insensitive to the consequences of redrawing the district lines through dense settlements of black population. The Government notes that though black families live throughout Orleans Parish, they are heavily concentrated in several areas comprising something of a chain extending eastwardly and westwardly across the city.[170] The contention is that the vertical north-south lines staking out the district boundaries established by Plan II have the purpose of discriminating against black voters since they obviously carve up major black neighborhoods which follow a horizontal east-west progression.

[167] See note 18, *supra*.

[168] See Part VI(B), *infra*.

[169] See Part V(A), *supra*.

As additional support for its claim of improper motive, the Government points to evidence tending to show a conscious effort by the planners to preserve, as far as possible, the existing districts—represented, of course, by incumbent councilmen.[171] The Government also endeavors to bolster its argument by reference to the long history of past racial discrimination in New Orleans.[172] The Government hastens to remind us that the City has the burden of proof on the issue,[173] and that neither the Government nor the intervenors are required to come forward with an affirmative showing thereon.

Such, in brief summary, is the posture of the evidence directed toward the issue of purpose of Plan II, an issue, however, which we have no occasion to decide. New Orleans, we reiterate, bears the burden of proving that the plan is untainted by racial discrimination, not only in its objective but also in its potential effect.[174] For reasons we elaborate in the remainder of this opinion, we find that Plan II will

[170] See Part I(A), *supra*.

[171] Preservation of incumbents' districts is not automatically a disqualifying consideration. See *White* v. *Weiser*, 412 U.S. 783, 791 (1973); *Burns* v. *Richardson*, *supra* note 145, 384 U.S. at 89 n.16. Nonetheless, it is an element to be viewed in the complex of motivating forces.

[172] See Part VII(C), *infra*.

[173] See Part VI(B), *infra*.

[174] See text *supra* at note 123; Parts III(B), (C), IV(B), (C), *supra*, and Part VI(B), *infra*.

have the effect of abridging the right to vote on account of race or color.[175] So concluding, we need not ponder whether the framers of the plan intended that result to follow.

C. *Effect of the Plan*

In assessing the effect of Plan II upon the black vote in councilmanic elections in New Orleans,[176] the initial step is a comparison of (a) the potential of that vote when uninhibited by artificial barriers with (b) the potential the vote will have once the plan joins the family of procedures for voting at such elections. This starting point is dictated by considerations fundamental to the technique of ascertaining whether in any situation the right to vote has been abridged. The Constitution outlaws any electoral scheme which is "used invidiously to cancel out or minimize the voting strength of racial groups,"[177] and Section 5 bars approval of any scheme which will have that effect.[178] Di-

[175] Parts VI-VIII, *infra*.

[176] Inquiry as to the effect of the plan upon the right to vote properly extends to any councilmanic election—primary or general, regular or special. "[T]he Act gives a broad interpretation to the right to vote," *Allen* v. *State Bd. of Elections, supra* note 102, 393 U.S. at 565-66:

> The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this subchapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

Voting Rights Act of 1965, § 14(c)(1), 42 U.S.C. § 1973*l*(c)(1) (1970).

[177] *White* v. *Regester, supra* note 145, 412 U.S. at 765. See also *Turner* v. *McKeithen, supra* note 145, at 13-14; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1304.

[178] See Parts III(B), (C), IV(B), (C), *supra*.

lution—a species of abridgment—of the right to vote[179] is necessarily gauged by the difference between the value—the weight—which the vote should have and the value which in the particular circumstances it really has.[180]

In determining the impact of a redistricting plan upon the voting capability of a racial minority, the relevant comparison is between the results which the minority is constitutionally free to command and the results which the plan leaves the minority able to achieve.[181] A substantial difference between the two, not justified by a compelling governmental interest, is unconstitutionally enervating.[182] Moreover, a plan which unjustifiably curtails the voting power of one racial group more severely than the power of another similarly situated group is patently discriminatory.[183] The value to which the New Orleans black vote is legally entitled is "a theoretical optimum designed to give fair representation to both minority and majority groups

[179] See Part IV(C), *supra*.

[180] See Part IV(C), *supra*. The point is well illustrated in many cases wherein claims of population malproportionment for state elections are advanced. The standard in such cases, dictated by the Equal Protection Clause of the Fourteenth Amendment, is "one man, one vote" substantially equal in weight to the votes of all other electors. The ideal is perfect equality, and dilution is the degree to which one man's vote is unjustifiably assignd a value less than full equality. Unconstitutionality of the apportionment plan may result from too great a difference between the actual weight of particular votes and the theoretical quality of the ideal. *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 568, 577-79. See *Whitcomb* v. *Chavis, supra* note 145, 403 U.S. at 161-63; *Swann* v. *Adams, supra* note 142; *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967). Compare *White* v. *Regester, supra* note 145; *Gaffney* v. *Cummings, supra* note 142; *Mahan* v. *Howell, supra* note 142.

[181] See Part IV(C), *supra*.

[182] See Part VI(B), *infra*.

[183] See cases cited *supra* note 180.

in the City";[184] and the test of the plan proposed for New Orleans is whether on the one hand it indulges or on the other hand forecloses the opportunity for that brand of representation.

When we apply these standards to the case at bar, we can conclude only that Plan II will necessarily dilute the right of black citizens to vote in councilmanic elections held thereunder in New Orleans. We find that the inexorable consequence of the plan will be a *drastic* reduction in the voting strength of the black minority in such elections. We are brought to that finding irrespective of whether, for purposes of decision, we assess black voting strength in New Orleans at the level of black voter registration [185] or on the basis of black population,[186] or whether from either viewpoint we examine the plan simply in light of the extrinsic requirement of at-large elections for two seats.[187] As this opinion reflects, we have approached the problem from each of these three directions, and in each instance we have reached the same result.[188]

VI. Dilution of Present Black Voting Strength

A. *The Facts*

Taking the power of the black vote in New Orleans merely for what it now is, as distinguished from what if historically unsuppressed the black vote actually should be,[189] it may nonetheless be readily discerned that the City's re-

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[184] *Dobson* v. *Mayor & City Council of Baltimore City*, 330 F. Supp. 1290, 1299 (D.Md. 1971).

[185] See text *supra* at note 10.

[186] See text *supra* at notes 10-11.

[187] See text *supra* at note 13.

[188] See Parts VI, VII, VII, *infra*.

[189] We consider the plan from the latter viewpoint in Part VII, *infra*.

districting plan would diminish markedly the potency of that vote in councilmanic elections.

Based upon voter registration, black voting strength is 34.5% of total voting strength in New Orleans.[190] With seven members to be nominated or elected at councilmanic elections, the power of the black vote is theoretically equivalent to 2.42 seats on the Council.[191] While the measurement of group voting strength and of its dilution is a matter of comparing potentials,[192] the practice of bloc voting along racial lines which so frequently pervades elections in New Orleans [193] would expectably bring the black and white voting potentials fairly close to reality.

Under redistricting Plan II, however, the strength of the black vote would be much lower than its 34.5% potential. This becomes apparent when the plan is viewed, as it must be, in the whole of the context in which it would operate.[194] Two members of the Council would be elected from the city at large, and each of the others from one of the five councilmanic districts.[195] Nominations of candidates for councilmanic office at primary elections would require majority vote,[196] and singleshot voting would be taboo.[197] With black voting power at 34.5% of total voting power, black citizens in New Orleans are a distinct minority on a citywide basis. Under Plan II, they are also the minority in four of the

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[190] See Part V(A), *supra*.

[191] That is, 34.5% of the seven seats. Compare *Dobson* v. *Mayor & City Council of Baltimore City*, *supra* note 184, 330 F.Supp. at 1298-99.

[192] See Parts IV(C), V(C), *supra*.

[193] See Part II(B), *supra*.

[194] See Part V(C), *supra*.

[195] See note 13, *supra*, and accompanying text.

[196] See Parts II(B), V(A), *supra*.

[197] See note 13, *supra*, and accompanying text.

five councilmanic districts, wherein black registered voters are confined to a range of 22.6% to 43.2% of the district totals.[198] Only in District B, where they would reach 52.6%,[199] is black voting strength theoretically self-sufficient to elect a candidate and, the thinness of the margin considered, only doubtfully so.[200]

Thus analyzed, Plan II, operating conjunctively with existent features of the New Orleans scheme for the election of councilmen, would limit the capability of the black vote to but one of the seven seats on the Council. This contrasts sharply with the black vote's theoretical equivalent of 2.42 seats,[201] and with the artificial gain of the white vote to 6.00 seats from its theoretical equivalent of 4.58 seats.[202] These deviations are the consequence of fragmentation of the black vote for the five district seats and its compartmentation in districts so constructed that it attains a majority status in only one, in cooperation with phenomena of at-large elections for the two remaining seats, and majority- and multiple-vote prerequisites to candidacy for any seat. It cannot be doubted that the reduction in the strength of the black vote from its natural potential of 2.42 seats to an actual equivalent of a dubious one seat is a dilution in every sense of the word.[203] Nor can it be gainsaid

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[198] See Part V(A), *supra*.

[199] See Part V(A), *supra*.

[200] Compare *Dobson* v. *Mayor & City Council of Baltimore City*, *supra* note 184, 330 F.Supp. at 1299.

[201] See text *supra* at note 191.

[202] That is, 65.5% of the seven seats.

[203] See *Kilgarlin* v. *Hill*, *supra* note 180; *Swann* v. *Adams*, *supra* note 142; *Lucas* v. *Forty-Fourth Gen. Assembly*, 377 U.S. 713 (1964); *Roman* v. *Sincock*, 377 U.S. 695 (1964); *Reynolds* v. *Sims*, *supra* note 137; *Ellis* v. *Baltimore*, 352 F.2d 123 (4th Cir. 1965); *Skolnick* v. *Chicago*, 415 F.2d 1291 (7th Cir. 1969), *cert. denied*, 397 U.S. 954 (1970).

that Plan II would lay a much heavier hand upon New Orleans' black minority than upon its white majority.[204]

We wish to make it plain that the question before us is not whether New Orleans must confer upon its black citizens every political advantage that a redistricting plan conceivably could offer. We agree that "a minority group is not constitutionally entitled to an apportionment structure designed to maximize its political advantage,"[205] nor "to one or more 'safe' or majority districts simply because an apportionment scheme could be drawn to reach this result."[206] But just as surely, "neither may [the group] be enveloped in a structure which will necessarily minimize its potential for meaningful access to the political process."[207] The Government and the intervenors, as they should, press vigorously on behalf of black voters for all that is their due, but they ask for no more.

B. *The Justifications Proffered*

The City urges a variety of considerations as legitimate local interests justifying the scheme incorporated into Plan II despite the damage it will inflict on the black vote. The justifications the City proffers are subsumed in a group of guidelines within which the research staff undertook the development of the several redistricting concepts which from time to time were submitted to the City Council.[208] (For purposes of restatement, we adopt the City's listing, which accurately summarizes the evidence on that score.)[209]

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[204] See, *e.g.*, notes 26 and 33, *supra*.

[205] *Turner* v. *McKeithen*, *supra* note 145, at 13.

[206] *Id.* at 13 n.24. See also *Whitcomb* v. *Chavis*, *supra* note 145, 403 U.S. at 156-60; *Howard* v. *Adams County Bd. of Supervisors*, *supra* note 145, 453 F.2d at 458.

[207] *Turner* v. *McKeithen*, *supra* note 145, at 13-14. See also text *infra* at Parts VII and VIII.

[208] See Parts II(A), (C), *supra*.

[209] See Part II(A), *supra*.

The redistricting should be accomplished without diluting the voting rights of any minority group within the city. The object of the redistricting should be achievement, as nearly as possible, of a mathematical balance of population within each of the five councilmanic districts in order to insure ompliance with the "one man, one vote" edict. Whenever possible, existing ward and precinct boundaries should be left undisturbed by district boundaries, and historic and traditional district boundaries should be observed in an effort to preseve continuity within the electorate. Natural boundaries created by the Mississippi River and Lake Pontchartrain, and the economic and social effect of the river and lake on the city, should be considered, as well as man-made boundaries existing in the form of important streets and canals, a majority of which run in a north-south direction. Prospective councilmanic districts should be contiguous and compact.

Since the redistricting activity in New Orleans sought a nearly equal population balance within the councilmanic districts, the local concerns reflected by the guidelines paralleled factors which have endured exposure in state legislative apportionment cases.[210] While population is the controlling criterion for judgment in controversies of that type,[211] mathematical exactness in redistricting is an impractical goal[212] and small departures from a mathematic-

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[210] *Gaffney* v. *Cummings, supra* note 142, 412 U.S. at 752; *Burns* v. *Richardson, supra* note 145, 384 U.S. at 89 n.16. See *White* v. *Regester, supra* note 145, 415 U.S. at 764-65 n.8; *Mahan* v. *Howell, supra* note 142; and compare *White* v. *Weiser, supra* note 171, 412 U.S. at 791 (minimize contests between incumbents); *Abate* v. *Mundt, supra* note 142, 403 U.S. at 185 (maintain integrity of political subdivision lines); *Whitcomb* v. *Chavis, supra* note 145, 403 U.S. at 162 n.42 (construct contiguous-compact districts).

[211] *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 567.

[212] *Roman* v. *Sincock, supra* note 203, 377 U.S. at 710; *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 577.

ally precise "one man, one vote" standard may be indulged.[213] "So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy," the Supreme Court has said, "some deviations from the equal-population principle are constitutionally permissible."[214] But the validity of the apportionment depends upon "faithful adherence to a plan of population-based representation,"[215] and the departures allowable are "such minor deviations only as may occur in recognizing certain factors which are free from any taint of arbitrariness or discrimination."[216]

We do not underestimate the complexity of the difficulty of redistricting a large metropolitan area, nor do we denigrate the recognition in a reapportionment plan of legitimate local interests within the narrow range legally allowed. The evidence in this case, however, tends to weaken the group of interests which the City advances. The guidelines utilized by the staff were never deemed an absolute code, but rather a flexible mold enabling innovation and change. Examples of variations which the guidelines indulged are the various concepts submitted by the staff,[217] the contrasting treatments of Algiers,[218] the occasional splitting of wards and precincts,[219] and the free interchange of geo-

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[213] *Roman* v. *Sincock, supra* note 203, 377 U.S. at 710; *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 578-81.

[214] *Reynolds* v. *Sims, supra* note 137, 377 U.S. at 579.

[215] *Roman* v. *Sincock, supra* note 203, 377 U.S. at 710.

[216] *Id.; Reynolds* v. *Sims, supra* note 137, 377 U.S. at 579.

[217] See Parts II(A), (C), *supra.*

[218] Compare Part II(A) with Part II(C), *supra.*

[219] In Louisiana, the division of parishes into wards served to establish geographical units for the election of police juries—governing bodies of the parishes—school boards and some local officers. In 1912, Orleans Parish had a commission form of local govern-

graphical phenomena.[220] The evidence indicates that the Council's second plan—the plan now under investigation—may have been as much the handiwork of councilmen as of the staff, with resultant uncertainty as to the extent that allegiance to the staff's guidelines was maintained. The evidence also discloses wide differences of opinion among the councilmen as to the relative priority and weight which the factors incorporated into the guidelines should be assigned. And, quite importantly, in some respects some of the factors may legally be open to question.[221]

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ment, which functioned more as an administrative than a legislative body, and its territory, the boundaries of which are coterminous with the present City of New Orleans, was divided into wards principally for purposes of state and federal elections. Precinct lines were drawn as subdivisions within the wards for locating neighborhood voting booths and establishing voter group entities.

The adoption in 1954 of a home rule charter and the mayor-council form of government for New Orleans rendered obsolete the original function of the ward lines as regards municipal elections. Under the 1954 charter, the geographic boundaries for such elections are the district lines and not the ward lines.

Testimony from both councilmen and staff members stressed their concern for observing ward and precinct lines as traditional, historic political boundaries. It is clear, however, that the ward boundaries are political anachronisms insofar as councilmanic elections are concerned, and survive merely as convenient administrative designations for groups of precincts. And, in the formulation of Plan I, the Council's action in splitting the Fifteenth Ward—Algiers—three ways and assigning the pieces to three different districts undermined any assumed importance of keeping ward boundaries intact. Moreover, as the parties stipulated at trial, it is mathematically impossible to combine the existing wards in New Orleans in such a way as to achieve an equal population dispersion in five councilmanic districts.

[220] See Part II(C), *supra*.

[221] See *Lucas* v. *Forty-Fourth Gen. Assembly*, *supra* note 203; 377 U.S. at 738 (history, heterogeneous characteristics, geographical and topographic considerations); *Maryland Comm. for Fair Representation* v. *Tawes*, 377 U.S. 656, 675 (1964) (history, tradition); *Reynolds* v. *Sims*, *supra* note 137, 377 U.S. at 578-79 (history).

We need not engage in a detailed discussion along these lines, however, because in any event the City's attempt at justification falls far short of the mark. "[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect,"[222] we are reminded, and "courts must subject them to the most rigid scrutiny."[223] Beyond that, the right to vote is "a fundamental political right, . . . preservative of all rights,"[224] and "before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny."[225]

Dilutions of the right to vote which are to be tested by the equal protection standard—which involves a balancing of competing governmental and private interests[226]—may withstand analysis upon a firm showing that they are rationally related to a permissible governmental interest.[227] But, the Supreme Court admonishes, "a more exacting test is required for any [governmental action] that 'place[s] a "*condition*" on the exercise of the right to vote.'"[228] In pursuing even the most substantial of its interests, government "cannot choose means which unnecessarily burden or restrict constitutionally protected ac-

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[222] *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944).

[223] *Id.*

[224] *Dunn* v. *Blumstein*, 405 U.S. 330, 336 (1972), quoting *Reynolds* v. *Sims*, *supra* note 137, 377 U.S. at 562.

[225] *Evans* v. *Cornman*, 398 U.S. 419, 422 (1970). See also *Dunn* v. *Blumstein*, *supra* note 224, 405 U.S. at 336; *Bullock* v. *Carter*, 405 U.S. 134, 143 (1972).

[226] See *Gaffney* v. *Cummings*, *supra* note 142, 412 U.S. at 748-49; *White* v. *Regester*, *supra* note 145, 412 U.S. at 761-62; *Abate* v. *Mundt*, *supra* note 142, 403 U.S. at 185.

[227] *E.g.*, *Reynolds* v. *Sims*, *supra* note 137, 377 U.S. at 568.

[228] *Dunn* v. *Blumstein*, *supra* note 224, 405 U.S. at 337, quoting *Bullock* v. *Carter*, *supra* note 225, 405 U.S. at 143.

tivity."[229] So, "if a challenged statute grants the right to vote to some citizens and denies the franchise to others, 'the Court must determine whether the exclusions are *necessary* to promote a *compelling* state interest.' "[230] "And if there are other, reasonable ways to achieve [its] goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater *interference*";[231] rather, "[i]f it acts at all, it must choose 'less drastic means'."[232] We have no doubt whatever that in light of the strictures of the Fifteenth Amendment,[233] the standard which justifications of denials of voting rights must meet applies equally to dilutions of those rights. Nor do we doubt that Section 5 of the Voting Rights Act accommodates any less than the Fifteenth Amendment demands.[234]

The question, then, is whether the City has satisfied the high standard of justification. We think it clear that the question must be answered in the negative. As the Supreme Court has recently stated, "[i]t is well established that in a declaratory judgment action under § 5, the plaintiff State has the burden of proof."[235] The Court explained:

> The very effect of § 5 was to shift the burden of proof with respect to racial discrimination in voting. Rather

[229] *Dunn* v. *Blumstein, supra* note 224, 405 U.S. at 343.

[230] *Id.* at 337, quoting *Kramer* v. *Union Free School Dist.,* 395 U.S. 621, 627 (1969). See also *Cipriano* v. *City of Houma,* 395 U.S. 701, 704 (1969); *City of Phoenix* v. *Kolodziejski,* 399 U.S. 204, 205, 209 (1970).

[231] *Dunn* v. *Blumstein, supra* note 224, 405 U.S. at 343, quoting *Shelton* v. *Tucker,* 364 U.S. 479, 488 (1960).

[232] *Id.*

[233] See Parts III(A), IV(C), *supra.*

[234] See Parts III, IV, *supra.*

[235] *Georgia* v. *United States, supra* note 119, 411 U.S. at 538. See also *City of Petersburg* v. *United States, supra* note 5, 354 F.Supp. at 1027.

> than requiring affected parties to bring suit to challenge every changed voting practice, States subject to § 5 were required to obtain prior clearance before proposed changes could be put into effect. The burden of proof is on "the area seeking relief."[236]

Even were we to assume that the justifications the City presses could ever override the right of its black citizens to cast meaningful votes—a question we in no wise undertake to now decide—the burden in the case at bar was at least to demonstrate that nothing but the redistricting proposed by Plan II was feasible.[237] The City has not made that sort of demonstration; indeed, it was conceded at trial that neither that plan nor any of its variations was the City's sole available alternative.

Moreover, it is clear enough to us that the interests which the City asserts here cannot justify a black voting-strength dilution of the magnitude which the plan forebodes. The reduction here, we repeat, is from 2.42 of seven seats at least to a single seat, and perhaps even to no seat at all.[238] That is a curtailment of the black vote to considerably less than half of its potential, if indeed not a complete negation of its potential. The Equal Protection Clause tolerates some limited accommodation of governmental interest at the expense of very minor dilution of the vote, but certainly nothing on the scale indicated here.[239] Surely the Fifteenth Amendment, which flatly enjoins all governments from denying or abridging the right to vote on account of race or color,[240] discountenances the abridgment evident in this case.

[236] *Georgia* v. *United States, supra* note 119, 411 U.S. at 538 n.9, quoting *South Carolina* v. *Katzenbach, supra* note 86, 383 U.S. at 335.

[237] See text *supra at* notes 235-36.

[238] See Part VI(A), *supra.*

[239] Compare cases cited at note 226, *supra.*

[240] See Parts III(A), IV(C), *supra.*

VII. Dilution of Potential Black Voting Strenth

A. *The Question*

We turn now to analyze New Orleans' redistricting Plan II from a somewhat different viewpoint. The inquiry here will be whether the plan will operate "invidiously to cancel out or minimize the voting strength of [the] racial group []"[241] which the black citizens of the city comprise. We find that the plan will indeed have that effect.

In the previous section of this opinion, we saw that the proposed redistricting, in combination with other forces inhering in the processes by which councilmen are nominated and elected in New Orleans, will cut the strength of the city's black vote down to a point far below its present 34.5% potential as reflected by black voter registration.[242] Black population, however, is 45.0% of the city's total population,[243] and the theoretical entitlement of black population of that size on a seven-member elected body is 3.15 seats.[244] We have seen, however, that if the redistricting plan before us takes its place in the electorial scheme, it will indulge the black vote a theoretical equivalent of but one councilmanic seat,[245] and in a practical sense by only a narrow margin at that. Moreover, even if black voting power, in terms of voter registration, were directly proportional to black population, the two seats to be filled by the two districts in which black population preponderates[246]—albeit in one very narrowly[247]—are less than two-

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[241] *White* v. *Regester, supra* note 145, 412 U.S. at 765. See also Part IV(C), *supra*.

[242] See Part VI(A), *supra*.

[243] See Part I(A), *supra*.

[244] That is, 45% of the seven seats.

[245] See Part VI(A), *supra*.

[246] Districts B and E. See text *supra* at Part V(A).

[247] The preponderance of black population in District E is only 0.6%. See Part V(A), *supra*. Compare *Dobson* v. *Mayor and City Council of Baltimore City, supra* note 184, 330 F.Supp. at 1299.

thirds of black entitlement.[248] Most importantly, any consideration, from the viewpoint of black population, of the effect of Plan II upon the black right to vote inevitably questions why the number of black registered voters lags so far behind the number of black inhabitants of New Orleans.[249]

Equality in weight of the vote, as well as in the right to cast a vote, is the constitutional due of black and white citizens alike.[250] "[P]opulation is the proper measure of equality in apportionment,"[251] and inequality visited because of race or color is an abridgment of the right to vote within the condemnation of the Fifteenth Amendment.[252] The question thus becomes whether, from the standpoint of black population rather than black voter registration, the black vote will be impermissibly impaired by Plan II. Restated somewhat, the question is whether the plan will dilute the voting power of the black community in terms of its full potential rather than its current level. In a very real sense, the dilution question subsumes the core question of why the rate of white voter registration is nearly double the rate of black registration.[253] For answers to these questions, there is a sizeable body of precedent which we may readily consult.[254]

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[248] That is, 2.00 of 3.15 seats. See text *supra* at note 244.

[249] Of 267,308 black residents of New Orleans, 83,588, or 34.5%, are registered voters. See text supra at Part II(A). On the other hand, 158,828, or 65.5% of 326,163 white residents of New Orleans are registered.

[250] See Part IV(C), *supra*.

[251] *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1303.

[252] See Parts III(A), IV(C), *supra*.

[253] See note 249, *supra*.

[254] To resolve these questions, we pursue the inquiries and apply the principles approved in cases, hereinafter cited, involving claims that multimember electoral districts will unconstitutionally dilute the voting strength of a racial or ethnic group. Those decisions

B. *The Legal Doctrine*

Dilution of the vote of a racial minority is not shown by "a mere disparity between the number of minority residents and the number of minority representatives," [255] or by the fact "that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential." [256] A claim of abridgment of the minority vote —from the viewpoint of the minority's full potential in the political arena—is meritorious only when it appears that "the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." [257] So, while "population is the proper measure of equality in apportionment, . . . access to the political process and not population [is] the barometer of dilution of minority voting strength." [258]

The investigation of this branch of the litigation calls for careful examination of a variety of circumstances.[259] Our decision must rest upon a delicate balance of all rele-

furnish precedents of the highest quality for cases like ours. The issues are identical—whether an electoral prerequisite or procedure improperly waters down the group's right to vote—and the investigation called for is essentially the same. The legal rules are no less commonly applicable simply because the problem is generated by a multimember district in the one situation and by a redistricting plan in the other. For an earlier decision of this court similarly applying these principles analogously, see *City of Petersburg* v. *United States*, *supra* note 5, 354 F.Supp. at 1028.

[255] *Zimmer* v. *McKeithen*, *supra* note 145, 485 F.2d at 1305.

[256] *White* v. *Regester*, *supra* note 145, 412 U.S. at 765-66.

[257] *Id.* at 766.

[258] *Zimmer* v. *McKeithen*, *supra* note 145, 485 F.2d at 1303.

[259] See Part II(B), *supra*.

vant factors.[260] Giving due attention and weight to those factors, we find that the plan for the redistricting of New Orleans will indubitably have the effect of minimizing the voting strength of black citizens in councilmanic elections.

C. *Application of Doctrine*

We look first to the lengthy "history of official racial discrimination in [Louisiana], which at times touched the right of Negroes to register and vote and to participate in the democratic processes." [261] The pertinent historical events demonstrate not only "that black ha[ve] suffered a history of official racial discrimination which touched their right to participate in democratic processes," [262] but also "that the existence of past discrimination in general precludes the effective participation in the elective system." [263]

For generations, black inhabitants of New Orleans were segregated in public schools,[264] public assemblies,[265] public

[260] See text *supra* at notes 226-34.

[261] *White* v. *Regester*, *supra* note 145, 412 U.S. at 766.

[262] *Zimmer* v. *McKeithen*, *supra* note 145, 485 F.2d at 1305. See also *id.* at 1306; *White* v. *Regester*, *supra* note 145, 412 U.S. at 766; *Turner* v. *McKeithen*, *supra* note 145, at 6, 7-9.

[263] *Zimmer* v. *McKeithen*, *supra* note 145, 485 F.2d at 1305.

[264] See *Bush* v. *Orleans Parish School Bd.*, 138 F.Supp. 336 (E.D.La), *dissolving three-judge court;* 138 F.Supp. 337 (E.D. La. 1956), *aff'd*, 242 F.2d 156 (5th Cir.), *cert. denied*, 354 U.S. 921 (1957); 163 F.Supp. 701 (E.D.La.), *aff'd*, 252 F.2d 253 (5th Cir.), *cert. denied*, 356 U.S. 969 (1958), 268 F.2d 78 (5th Cir. 1959); 187 F.Supp. 42 (E.D.La. 1960); *aff'd*, 365 U.S. 569 (1961); 188 F. Supp. 916 (E.D.La. 1960), *aff'd*, 365 U.S. 569 (1961); 190 F.Supp. 861 (E.D.La. 1960), *aff'd*, 365 U.S. 569 (1961); 191 F.Supp. 871 (E.D.La.), *aff'd*, 367 U.S. 908 (1961); 194 F.Supp. 182 (E.D.La), *aff'd*, 367 U.S. 907 (1961); 204 F.Supp. 568 (E.D.La. 1962); *new trial denied*, 205 F.Supp. 893 (E.D.La.), *modified*, 308 F.2d 491 (5th Cir. 1962).

[265] See *Bynum* v. *Schiro*, 219 F.Supp. 204 (E.D.La. 1963).

recreational facilities,[266] public transportation,[267] and even in the city hall.[268] For a long time they were victimized by governmentally-sanctioned residential segregation,[269] and still longer by discrimination in public employment[270] and exclusion from juries.[271] We cannot remain insensitive to

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[266] See *Fazzio Real Estate Co.* v. *Adams*, 396 F.2d 146 (5th Cir. 1968); *Robertson* v. *Johnson*, 376 F.2d 43 (5th Cir. 1967); *New Orleans City Park Improvement Ass'n* v. *DeSeige*, 252 F.2d 122 (5th Cir. 1958); *Bursthe* v. *City of New Orleans*, 219 F.Supp. 788 (E.D.La. 1963); *McCain* v. *Davis*, 217 F.Supp. 661 (E.D.La. 1963).

[267] See *Morrison* v. *Davis*, 252 F.2d 102 (5th Cir.), *cert. denied*, 356 U.S. 968 (1958). See also *United States* v. *Lassiter*, 203 F. Supp. 20 (W.D. La.), *aff'd*, 371 U.S. 10 (1962).

[268] This was established by uncontradicted evidence at trial.

[269] See *Tyler* v. *Harmon*, 158 La. 439, 104 So. 200 160 La. 943, 107 So. 704 (1925), *rev'd*, 273 U.S. 668 (1927); *Land Dev. Co.* v. *City of New Orleans*, 13 F.2d 898 (E.D.La.), *rev'd*, 17 F.2d 1016 (5th Cir. 1926). See also *Modern Amusements, Inc* v. *New Orleans Pub. Serv., Inc.*, 183 La. 898, 165 So. 137, 140 (1935); *Queensborough Land Co.* v. *Cazeaux*, 136 La. 724, 67 So. 641, L.R.A. 1916B 1201 (1915).

[270] During the tenure of the present administration the number of black municipal employees has increased from 16% in May, 1967, to 39% as of June, 1973. Testimony presented by the City identified 10-15 black persons who hold key supervisory positions with the local government. Occupants of the three top positions in each of the 10-12 major city departments are appointed by the Mayor. The remaining supervisory jobs are civil service positions which are filled by selections from the top three successful candidates on the standard Civil Service examination.

Yet, looking at the city's payroll as a whole three things are evident. First, 16% representation in city employment of 45% of the population can indicate only the severity of pre-1967 discrimination against black workers. Second, the number of black employees is still relatively small in comparison with the total municipal work force. Third, the pattern of employment reflects that blacks are, with limited exceptions, concentrated in low salaried maintenance and clerical positions.

[271] *Eubanks* v. *Louisiana*, 356 U.S. 584 (1968); *Goins* v. *Allgood*, 391 F.2d 692 (5th Cir. 1968); *Lahat* v. *Bennett*, 365 F.2d 698 (5th Cir. 1966).

the cultural and economic realities which are the heritage of decades of abominable race relations in New Orleans.[272] Even more directly related to minority suffrage in New Orleans is Louisiana's traditional and "successful policy of denying Negro citizens the right to vote because of their race."[273] The grandfather clause,[274] the literacy standard,[275] the white primary[276] and the "Segregation Com-

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[272] Compare *White* v. *Regester*, *supra* note 145, 412 U.S. at 768-70.

[273] *Louisiana* v. *United States*, *supra* note 93, 380 U.S. at 147.

[274] See *id.* at 148. See also note 89, supra, and accompanying text.

[275] An applicant for registration in Louisiana must "be able to read and write in the English language, or his mother tongue," La. Const. art. VIII, § 1(c) (1961), and must "demonstrate his ability to do so when he applies for registration. . . ." *Id.* The demonstration thus summoned entails each of the two exercises following. The first is "the reading and the writing from dictation given by the registrar, or an interpreter duly sworn, [of] any portion of the preamble of the Constitution of the United States of America. . . ." *Id.* The second is the "making, under oath, . . . [of a] written application for registration, in the English language, or his mother tongue. . . ." *Id.* The application must "contain the essential facts necessary to show that he is entitled to register and vote," *id.*, and must "be entirely written, dated and signed by him, except that he may date, fill out and sign," a prescribed form of application. *Id.* In either case, the application must be made "in the presence of the registration officer or his deputy, without assistance or supervision from any person or any memorandum whatever, other than the form of application. . . ." *Id.*

The application form, decreed by statute, La. Rev. Stats. Ann. art. 18 § 32 (1966 supp.), is comprehensive; understanding and completing it obviously demands a substantial degree of literacy; and false or illegal registration is punishable by fine and imprisonment. *Id.*, art. 18, §§ 32, 222 (1966 supp.). An applicant unable to make application in English may do so in his mother tongue from the dictation of an interpreter, La. Const. art. VIII, § 1(c) (1961), and an applicant unable to write because of physical disability may dictate his application to the registration officer, *id.*, but all illiterate applicants apparently are barred from registration. See

mittee'' [277] combined *inter sese* and with other techniques [278] to confine black political activity in Louisiana to a self-distressing level.[279]

We realize, of course, that judicial decisions [280] and the Voting Rights Act [281] have banished these obstacles to political functioning, and that race relations in the city have taken a turn for the better in recent years.[282] But neither of these wholesome developments negates the present significance of past racial discrimination. The debilitating effects of the old impediments persist and still hamper the black group's ability to function effectively in political processes.[283] The continuing handicap is mirrored in part by the fact that although black citizens in New

United States v. *Louisiana,* 225 F.Supp. 353, 357 n.6 (E.D.La. 1963), *aff'd,* 380 U.S. 145 (1965).

In addition to those literacy exactions, Louisiana also requires that an applicant for registration ''be able to understand and give a reasonable interpretation of any section of [the United States and Louisiana] Constitution[s] when read to him by the registrar. . . .'' La. Const. art. VIII, § 1(d) (1961). It seems that as late as 1965 the interpretation test had not been employed in New Orleans, *United States* v. *Louisiana, supra,* 225 F.Supp. at 381, and the record is silent as to whether since then it has been used there. We note also that applicants for registration must ''understand the duties and obligations of citizenship under a republican form of government,'' *id.* art. VIII §§ 1(c), (d), although again the role of the requirement in New Orleans voter registration is unclear.

[276] See *Louisiana* v. *United States, supra* note 93, 380 U.S. at 148-49. See also note 90, *supra,* and accompanying text.

[277] See *id.* at 149.

[278] See *id.* at 149-50; *United States* v. *Louisiana, supra* note 275, 225 F.Supp. at 363-81.

[279] See Part II(B), *supra.*

[280] See cases cited *supra* notes 89-93.

[281] See, for example, note 108, *supra.*

[282] See, for example, notes 65, 270, *supra.*

[283] *Turner* v. *McKeithen, supra* note 145, at 6; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1306. See also *Gaston County* v. *United States, supra* note 111, 395 U.S. at 296-97.

Orleans approach a numerical majority, they remain a decided minority of registered voters.[284] As the Supreme Court has said, ''[t]ests and devices [for voter registration] are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters.'' [285]

In assessing current afflictions of the plague of racial discrimination during yesteryears, a factor of undeniable importance is ''the potential effect of unequal educational opportunities upon exercise of the franchise.'' [286] Our concern in this regard is heightened by Louisiana's long adherence to a literacy test.[287] The relationship between educational inequality and literacy prerequisites to voting is well understood,[288] and empirical data on black and white voter registration when the test held sway in New Orleans unmasks a discrepancy too glaring to ignore.[289] While

[284] Compare *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1306.

[285] *South Carolina* v. *Katzenback ,supra* note 86, 383 U.S. at 330. See to the same effect, *Gaston County* v. *United States, supra* note 111, 395 U.S. at 292.

[286] *Gaston County* v. *United States, supra* note 111, 395 U.S. at 289. The literacy requirement in that case was that the applicant for registration ''be able to read and write any section of the [North Carolina] Constitution in the English language.'' *Id.* at 287 n.3. The Louisiana literacy standard, see note 275, *supra,* is surely no lower, and seemingly is even more demanding.

[287] See note 275, *supra.*

[288] See S.Rep. No. 162, 89th Cong., 1st Sess. 16 (1965); H.R. Rep. No. 439, 89th Cong., 1st Sess. 15 (1965); *Gaston County* v. *United States, supra* note 111, 395 U.S. at 296-97.

[289] Pre-Act registration of white and black inhabitants of New Orleans of voting age in 1960 was 63.0% and 28.4% respectively. U.S. Comm'n on Civil Rights, *Political Participation,* 240-41 (1968). Post-Act registration of the two groups rose less than 8 points to 67.7% for white citizens but nearly 20 points to 48.0% for black citizens as early as October, 1967. *Id.*

the door has always been open, the City has come forward nothing to "demonstrate that although its schools suffered from the inequality inherent in any segregated system,[290] the dual educational system had no appreciable discriminatory effect on the ability of persons of voting age to meet a literacy requirement."[291] In this case, the translation persuaded by the registration data is that the inferiority of black public schools has interacted with the literacy standard to exact a dreadful toll of would-be black registrants, to which the city's subpar black-voter strength stands even today as a monument.

Another factor denoting a minority's unequal access to political processes is its consistent inability to elect candidates to office.[292] Never has a black candidate won election to the New Orleans City Council. The evidence establishes that four black candidates have recently been elected to other offices,[293] but we do not regard their victories as truly significant to the problem under discussion. One was unopposed; the others ran on tickets strongly backed by well known white personalities.[294] Furthermore, when the history of black candidacy in New Orleans is viewed as a whole, these triumphs represent no more than nominal success.[295] We cannot assign to them much weight in the equation.

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[290] "Separate educational facilities are inherently unequal." *Brown* v. *Board of Educ.*, 347 U.S. 483, 495 (1964).

[291] *Gaston County* v. *United States, supra* note 111, 395 U.S. at 291.

[292] *White* v. *Regester, supra* note 145, 412 U.S. at 766-67; *Turner* v. *McKeithen, supra* note 145, at 9; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305-06.

[293] See note 69, *supra*, and accompanying text.

[294] See notes 66-69, *supra*.

[295] Moreover, like the Fifth Circuit,

> we cannot endorse the view that the success of black candidates at the polls necessarily forecloses the possibility of dilution of the black vote. Such success might, on occasion, be attributable to the work of politicians, who apprehending that the support of a black candidate would be politically expedient, campaigned to insure his election. Or such success might be attributable to political support motivated by different considerations—namely that election of a black candidate will thwart successful challenges to electoral schemes on dilution grounds. In either situation, a candidate could be elected despite the relative political backwardness of black residents in the electoral district. Were we to hold that a minority candidate's success at the polls is conclusive proof of a minority group's access to the political process, we would merely be inviting attempts to circumvent the Constitution. This we choose not to do. Instead, we shall continue to require an independent consideration of the record.

Zimmer v. *McKeithen, supra* note 145, 485 F.2d at 1307.

Still another factor indicating unequal access is "the unresponsiveness of legislators to [the] particularized interests" of the minority.[296] We have chronicled instances of indifference of city officials to the desires and needs of the black citizens they purported to represent.[297] We may add that "[t]he parish's long history of segregation and voter registration discrimination certainly was a relevant evidentiary factor on the likely degree of concern by local officials for the interests of the black community."[298] We do not say that all New Orleans legislators have been totally unresponsive; the evidence suggests sympathetic responses to some pleas of black constituents, but relatively speaking they were few. And we agree with the Fifth Circuit that "[w]ere we to hold that the absence of a claim of representation unresponsive to a minority's needs foreclosed constitutional attack, the voting strength of minorities could

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[296] *Id.* at 1305. See also *id.* at 1306; *White* v. *Regester, supra* note 145, 412 U.S. at 766-69; *Turner* v. *McKeithen, supra* note 145, at 6, 10.

[297] See text *supra* at note 71.

[298] *Turner* v. *McKeithen, supra* note 145, at 10 n.18.

be freely diluted without fear of constitutional restraint." [299]

Lastly, in appraising black opportunity to engage in the city's political processes, we remain advertent to two structural features of the electoral scheme which exert a devitalizing effect. One is the requirement of a majority vote as a prerequisite to nomination as a candidate for public office,[300] a precondition sharply criticized for its propensity for submerging racial and political minorities.[301] The other is the legislative ban on singleshot voting,[302] which forecloses concentration of the minority vote on a single aspirant in primary elections. These features of the electoral system have "enhanced the opportunity for racial discrimination," [303] and clearly they continue to do so today.

New Orleans has offered no justification for these consequences apart from the considerations we have already discussed and found lacking.[304] We have pointed out that the City had the burden of demonstrating some compelling governmental interest incapable of fulfillment through any available alternative,[305] and that the City has not carried this burden.[306] It follows that no more in its impact upon

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[299] *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1306-07 n.26. See also *Turner* v. *McKeithen, supra* note 145, at 10.

[300] See Part I(A), *supra*. Compare *White* v. *Regester, supra* note 145, 412 U.S.at 766; *Turner* v. *McKeithen, supra* note 145, at 7, 11; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305, 1306.

[301] See *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1306; *Graves* v. *Barnes*, 343 F.Supp. 704, 725 (W.D. Tex. 1972), *aff'd sub nom. White* v. *Regester, supra* note 145; *Evers* v. *State Bd. of Election Comm'rs*, 327 F.Supp. 640, 643 (S.D.Miss. 1971).

[302] See note 164, *supra*, and Part I(A), *supra*.

[303] *White* v. *Regester, supra* note 145, 412 U.S. at 766.

[304] See Part VI(B), *supra*.

[305] See Part VI(B), *supra*.

[306] See Part VI(B), *supra*.

potential than upon present black voting strength [307] can the proposed redistricting be approved.

VIII. The At-Large Elections

A. *The At-Large Problem*

Twice already, in particular contexts, we have attributed significance to the circumstance that New Orleans' proposed redistricting Plan II would leave two seats on the City Council to be filled by at-large elections,[308] as under the city's electoral scheme they now are.[309] No treatment of that facet of the city's electoral system could ignore the fact that with respect to the at-large seats, New Orleans is like any other multimember elective unit,[310] and is susceptible to visitation by a special kind of abridgment problem which has arisen in other multimember units.[311] The question now confronting us is whether, apart from the vices already discussed, Plan II suffers from that additional difficulty.

In considering whether the plan, in constructing five single member districts with decided black-voter minorities in four, we counted the two at-large seats on the City Council for purposes of ascertaining whether and to what extent the present strength of the city's black vote for councilmen would be weakened.[312] And in determining

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[307] See Part VI(B), *supra*.

[308] See text *infra* at notes 312-14.

[309] New Orleans, La., Charter art. III, § 3-102 (1954).

[310] [M]ulti-member districts—. . . in logic of analysis are merely one form of at-large voting." *Turner* v. *McKeithen, supra* note 145, at 7 n.8, quoting *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1315 (Clark, J., dissenting). See also *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1304.

[311] See note 254, *supra*.

[312] See Part VI(A), *supra*.

whether the plan would diminish the black-vote potential endowed by a large black population, we similarly included the at-large seats in the computation.[313] In each instance we accepted the obvious fact that on an at-large basis the black voters of New Orleans were a minority, and for purposes of measuring dilution we took the two at-large seats for what they are—the expectancy of the white vote.[314] This treatment of the at-large seats contributed to our conclusions that, examined from the standpoint of either its current or its potential level, black voting power for city councilmen would be disparaged by the redistricting projected.

The problem we now address is different. It is whether, aside from these consequences, the redistricting plan and at-large voting combine in any other way to enfeeble the black vote in concilmanic elections. The issue is raised by the intervenors, who insist that the combination has further effects.

B. *Jurisdiction to Consider*

We are met at the threshold by the City's charge that that issue is not properly in this case. As they state, the at-large election has been the vehicle for filling two councilmanic seats since 1954,[315] and the redistricting plan would provide nothing different in that regard. Since Section 5 only intercepts changes in voting procedures occurring since November 1, 1964,[316] and since this court's concern is statutorily limited to an application of Section 5,[317] the City argues that any additional at-large election problem is

[313] See Part VII(C), *supra*.

[314] See Parts VI(A), VII(C), *supra*.

[315] New Orleans, La., Charter art. III, § 3-102 (1954).

[316] See Part III(C), *supra*.

[317] *Beer* v. *United States, supra* note 6, at 6-10.

beyond the ambit of Section 5[318] and, by the same token, has no place in this litigation.

We think, however, that the issue tendered by the intervenors is properly and unavoidably before us. The impact of New Orleans' redistricting plan is not to be determined in a vacuum, nor on the basis of just some of the facts, but in the context of all circumstances touching the right to vote in councilmanic elections. The plan, if approved, would become a part of the machinery for electing the City Council, and would be instrumental in the choice of five of its members. Another part of the machinery is the at-large election for the two remaining members of the Council. The interrelationship of these two parts is as relevant as any other circumstance bearing on the effect which the plan will have. The Council is a seven-member—not a five-member—body, and at-large voting for two of its members is an important aspect of the backdrop against which operation of the plan must be viewed. If at-large voting and the redistricting plan contribute together to diminish the strength of the black vote in more ways than one, it is our responsibility to say so.

At-large voting, we have held, does make one such contribution because it puts two of the seven Council seats beyond the reach of the black vote.[319] It does so, we said, because the black vote is distinctly a minority vote at an at-large election;[320] and the redistricting plan, we continued, completes its devitalization to an impermissible degree.[321] The intervenors assert that for yet another reasons the at-large feature of councilmanic elections is a causative factor in black-vote dilution. Their position is that that very

[318] See *Georgia* v. *United States, supra* note 119, 411 U.S. at 535 n.7; *Perkins* v. *Matthews, supra* note 105, 400 U.S. at 394-95.

[319] See Parts VI(A), VII(C), *supra*.

[320] See Parts VI(A), VII(C), *supra*.

[321] See Parts VI(A), VII(C), *supra*.

feature—of itself, without assistance from any other factor —minimizes the black vote for the two at-large seats because, they say, black voters have been denied a meaningful role in the political activities which lead to nomination and election of the two at-large councilmen.

If that position be correct, the involvement of Section 5 becomes plain, for any weakening of the black vote for those two councilmen obviously reduces the strength of the black vote in regard to membership on the Council as a whole. And any depreciation of the right to vote which ensues from that quarter obviously has a debilitating effect upon any black voting power which the redistricting plan permits. The plan, to merit judicial approbation, must survive not only the restrictions on black voting which it alone imposes but also those which jointly with extrinsic phenomena it make possible. We conclude that the intervenors' contention must be entertained as a legitimate part of the investigation enjoined upon us by Section 5.

C. *Resolution of the Problem*

In examining the intervenors' claim, we start from the premise that "multimember districts are not *per se* unconstitutional, nor are they necessarily unconstitutional when used in combination with single-member districts . . . ." [322] It bears repeating, however, that multimember districts cannot be "used invidiously to cancel out or minimize the voting strength of racial groups," [323] and that such districts succumb to the Constitution when it appears "that the political processes leading to nomination and election were not equally open to participation by the group in question

[322] *White* v. *Regester, supra* note 145, 412 U.S. at 765. See also *Turner* v. *McKeithen, supra* note 145, at 12 n.23; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1304.

[323] *White* v. *Regester, supra* note 145, 412 U.S. at 765. See also *Turner* v. *McKeithen, supra* note 145, at 13-14; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1304.

. . . ." [324] We agree that an allegation of minority-vote dilution is unavailing "[w]here it is apparent that [the] minority is afforded the opportunity to participate in the slating of candidates to represent its area, that the representatives slated and elected provide representation responsive to minority's needs, and that the use of a multi-member districting scheme is rooted in a strong state policy divorced from the maintenance of racial discrimination. . . ." [325] But we also agree that a strong case of enervation emerges where a "state policy favoring multi-member or at-large districting schemes is rooted in racial discrimination," [326] or "where a minority can demonstrate a lack of access to the process of slating candidates, the unresponsiveness of legislators to their particularized interests, a tenuous state policy underlying the preference for multi-member or at-large districting, or that the existence of past discrimination in general precludes the effective participation in the election system. . . ." [327] And we further agree that "[s]uch proof is enhanced by a showing of the existence of . . . majority vote requirements [and] anti-single-shot voting provisions. . . ." [328]

The constitutional validity of a multimember district, in terms of its impact upon the voting strength of minority

[324] *White* v. *Regester, supra* note 145, 412 U.S. at 766. See also *Turner* v. *McKeithen, supra* note 145, at 12-14; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[325] *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305. See also *Whitcomb* v. *Chavis, supra* note 145, 403 U.S. at 149; *Burns* v. *Richardson, supra* note 145, 384 U.S. at 95-96; *Fortson* v. *Dorsey, supra* note 145, 379 U.S. at 439; *Turner* v. *McKeithen, supra* note 145, at 9.

[326] *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[327] *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305. See also *Turner* v. *McKeithen, supra* note 145, at 6.

[328] *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305. See also *Turner* v. *McKeithen, supra* note 145, at 7.

groups within its borders, depends upon a balance of a variety of relevant circumstances.[329] They are, as previously noted,[330] the same factors which we have already had occasion to consider.[331] To summarize briefly, they include past discrimination foreclosing present effect participation by the minority in political processes,[332] past inability of the minority to elect candidates,[333] apathy of legislators toward the wishes and wants of the minority community,[334] majority vote requirements,[335] and anti-singleshot prohibitions.[336] We have found that all of these have worked to the serious detriment of the black vote in New Orleans.[337]

Truly it has been said that "where a state or political subdivision attempts to employ multi-member districts in the wake of a history of pervasive racial discrimination, extreme

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[329] *White* v. *Regester, supra* note 145, 412 U.S. at 766; *Turner* v. *McKeithen, supra* note 145, at 6; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[330] See note 254, *supra*.

[331] See Part III(C), *supra*.

[332] *White* v. *Regester, supra* note 145, 412 U.S. at 766, 768-70; *Turner* v. *McKeithen, supra* note 145, at 6, 7-9; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[333] See text *supra* at notes 293-95. Compare *White* v. *Regester, supra* note 145, 412 U.S. at 766-67; *Turner* v. *McKeithen, supra* note 145, at 9; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305-06.

[334] Compare *Turner* v. *McKeithen, supra* note 145, at 6, 10; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[335] See text *supra* at note 299. Compare *White* v. *Regester, supra* note 145, 412 U.S. at 766; *Turner* v. *McKeithen, supra* note 145, at 7, 11; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[336] See text *supra* at note 301. Compare *Turner* v. *McKeithen, supra* note 145, at 7; *Zimmer* v. *McKeithen, supra* note 145, 485 F.25 at 1305.

[337] See Part VII(C), *supra*.

care must be used in order to protect against the potential for dilution." [338] That admonition has not been heeded in this case. We have examined and weighed the pertinent factors in another context and found that they deprive the black community in New Orleans of equal opportunity to participate in the political processes by which members of the City Council are nominated and elected.[339] To the earlier discussions we need only add here that the City has not supported the choice of at-large elections by any consideration which would satisfy the standard of compelling governmental interest,[340] or the need to demonstrate the improbability of its realization through the use of single-member districts.[341] These evaluations compel the conclusion that the feature of the city's electoral scheme by which two councilmen are selected at large has the effect impermissibly minimizing the vote of its black citizens; [342] and the further conclusion that for this additional reason the city's redistricting plan does not pass muster.[343]

IX. Disposition

All approaches to the redistricting problem in the City of New Orleans [344] converge at the same point. The plan tendered by the City will inexorably have the effect of abridging the right to vote in councilmanic elections on ac-

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[338] *Turner* v. *McKeithen, supra* note 145, at 12 n.23.

[339] See Part VII(C), *supra*.

[340] See Part VI(B), *supra*. Compare *Turner* v. *McKeithen, supra* note 145, at 6, 10, 12 n.23; *Zimmer* v. *McKeithen, supra* note 145, 485 F.2d at 1305.

[341] See Part VI(B), *supra*. Compare *Turner* v. *McKeithen, supra* note 145, at 12 n.23.

[342] See the cases cited *supra* note 322.

[343] See Part VIII(B), *supra*.

[344] See Parts VI-VIII, *supra*.

count of race or color.[345] We so decide, and that our judgment will abide.[346] And, exhausting our function by that adjudication,[347] the action will be dismissed. It goes without saying that, in consequence, the plan will remain under the continuing restraint of Section 5.[348]

SPOTTSWOOD W. ROBINSON, III
United States Circuit Judge

We concur:

/s/ H. F. CORCORAN
United States District Judge

/s/ JOSEPH C. WADDY
United States District Judge

March 15, 1974

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[345] See Parts VI(A), (B), VII(C), VIII(C), *supra*.

[346] See note 19, *supra*.

[347] See *Beer* v. *United States*, *supra* note 6, at 6-10.

[348] See *id.* at 10-11; and note 19, *supra*.

APPENDIX B

Judgment of the District Court

(Date Entered: March 15, 1974)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1495-73

PETER H. BEER, ET AL., *Plaintiffs*,

v.

UNITED STATES OF AMERICA, ET AL., *Defendants*,

and

JOHNNY JACKSON, JR., ET AL., *Intervenors*.

JUDGMENT

This action came on for hearing before the Court upon the complaint seeking a declaratory judgment that the redistricting plan submitted therewith complies with the requirements of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970), and upon the pleadings thereafter filed, the evidence introduced, and the briefs and oral arguments presented by the parties; and

The issues having been duly heard and a decision, by an opinion stating the Court's findings of fact and conclusions of law, having been duly rendered; and the Court having determined that, for the reasons discussed in its opinion, the redistricting plan submitted will have the effect of abridging, on account of race or color, the right to vote in councilmanic elections in the City of New Orleans, Louisiana; it is, this 15th day of March, 1974,

ORDERED and ADJUDGED that the declaratory judgment sought by the complaint be and hereby is denied, that the

action be and hereby is dismissed, and that the defendants and the intervenors recover of the plaintiffs their respective costs of action.

/s/ SPOTTSWOOD W. ROBINSON, III
United States Circuit Judge

/s/ H. F. CORCORAN
United States District Judge

/s/ JOSEPH C. WADDY
United States District Judge

APPENDIX C

Notice of Appeal by Appellants

(Date Filed: April 5, 1974)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1495-73

PETER H. BEER, ET AL., *Plaintiffs,*

v.

UNITED STATES OF AMERICA, ET AL., *Defendants,*

and

JOHNNY JACKSON, JR., ET AL., *Intervenors.*

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that Peter H. Beer, Philip C. Ciaccio, Joseph V. DiRosa, Clarence O. Dupuy, Jr., John D. Lambert, Jr., and James A. Moreau, Members of the Council of the City of New Orleans, acting For and On Behalf of the City of New Orleans, the plaintiffs herein, hereby appeal to the Supreme Court of the United States from the Judgment denying Plaintiffs' request for a Declaratory Judgment entered in this action on March 15, 1974.

This appeal is taken pursuant to the Voting Rights Act of 1965, 42 USCA § 1973 c (1970).

2. The clerk will please certify the entire record in this cause, including all Exhibits and the transcript of testimony and the transcript of all proceedings herein, to

the Supreme Court of the United States and transmit the same to the Supreme Court of the United States.

/s/ BLAKE G. ARATA
Blake G. Arata
City Attorney
City of New Orleans

/s/ ERNEST L. SALATICH
Ernest L. Salatich
Assistant City Attorney
City of New Orleans

STONER, TREESE & RUFFNER

By: /s/ JAMES R. STONER
JAMES R. STONER
1000 Connecticut Avenue
Washington, D.C. 20036
(202) 293-2131
Attorneys for Plaintiffs

A True Copy
JAMES F. DAVEY, *Clerk,*

By NANCY R. KING
Deputy Clerk

APPENDIX
Volume I

Supreme Court, U. S.
FILED
DEC 16 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

v.

UNITED STATES OF AMERICA
and
WILLIAM B. SAXBE, Attorney General of the United States, Individually and in His Official Capacity,
and
JOHNNY JACKSON, JR., ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

DOCKETED JUNE 13, 1974
PROBABLE JURISDICTION NOTED OCTOBER 15, 1974

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[NOTE: The Opinion of the United States District Court for the District of Columbia is included as Appendix A; the Judgment of that Court as Appendix B; and the Notice of Appeal to this Court as Appendix C in the Jurisdictional Statement filed herein.]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

v.

UNITED STATES OF AMERICA
and
WILLIAM B. SAXBE, Attorney General of the United States, Individually and in His Official Capacity,
and
JOHNNY JACKSON, JR., ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

APPENDIX

Volume I

Docket Entries

United States District Court for the District of Columbia

1973

July 25—Complaint, appearance Exhibits A thru H filed

July 25—Summons, Copies (2) and Copies (2) of Complaint issued D.A. & A.G. ser. 7-30

July 25—Petition for designation of a three-judge court.

July 25—Motion to advance case for hearing: P & A's.

July 26—Request for the designation of a Three Judge Panel. (N) Waddy, J.

July 30—Designation of the Hon. Spottswood W. Robinson, III, U.S.C.A. and the Hon. Howard F. Corcoran, U.S.D.C. to serve with the Hon. Joseph C. Waddy, U.S.D.C. as members of a Three-Judge Panel to hear this case. (N) McGowan, J., Acting Chief Judge.

Aug. 1—Application of defts. for order permitting service of subpoenas pursuant to 42 USC 1973 1(d); c/m 8-1-73.

Aug. 1—Order Granting deft's #1 permission to issue Subpoenas pursuant to the provisions of 42, U.S.C. 1973 (d). (N) Waddy, J.

Aug. 1—Order Granting motion of pltfs. to advance case for hearing on merits set for 10:00 A.M., 8-9-73; directing parties to submit statements of legal position and cases upon which they rely not later than noon, Wed., 8-8-73 to the Court. (N) Waddy, J.

Aug. 6—Exhibits C and H to the complaint with memorandum.

Aug. 8—Pre-Trial Memorandum for the United States.

Aug. 8—Pre-Trial Memorandum by pltfs; c/m 8-8-73.

Aug. 8—Motion of Johny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush to intervene as defts.; exhibit A; P&A; attachment; c/m 8-8-73; app. of James M. Nabrit, III (10 Columbus Circle, New York, N. Y.) Deposit $5.00 by Nabrit.

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Aug. 9—Appearance of Charles E. Cotton for deft. intervenors.

Aug. 9—Appearance of Charles E. Williams, III, for deft. intervenors.

Aug. 9—Appearance of Stanley A. Halpin, Jr. for deft. intervenors.

Aug. 9—Trial by Three Judge Panel begun; Motion of defts. to intervene argued and granted; respited until 8-10-73 @ 10:00 a.m. (Rep. E. Fedoration) S. Robinson, J., U.S.C.A., Corcoran, J. Waddy, J. U.S.D.C.

Aug. 10—Trial resumed; respited to October 17, 1973 @ 10:00 a.m. (Rep. Vernell Marshall) S. Robinson, J. U.S.C.A., Corcoran, J. Waddy, J., U.S.D.C.
(Injunctive order to be presented 8/13/73)

Aug. 13—Motion of pltfs. for extension of time to file proposed order; c/s 8/13/73.

Aug. 13—Order extending time to and including 8/14/73 @ 3:00 p.m. to submit proposed order. (N) S. W. Robinson, J. U.S.C.A., Corcoran, J., Waddy, J.

Aug. 13—Answer of Johnny Jackson, Jr., et al, intervenors to the complaint.

Aug. 14—Memorandum to the Honorable Spottswood Robinson, III, U.S.C.A., the Honorable Howard F. Corcoran, U.S.D.C., and the Honorable Joseph C. Waddy, U.S.D.C., from James R. Stoner, dated 8/14/73. (fiat) Robinson, J.—U.S.C.A.

Aug. 14—Order enjoining the Office of City Councilman of the City of New Orleans from conducting any elections pending final declaration of the rights of all parties

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in this action by this court. (N) Robinson, J.—U.S.C.A., Corcoran, J.—U.S.D.C. Waddy, J.—U.S.D.C.

Aug. 31—Transcript of Proceedings, August 9, 1973; pages 1 thru 171; Rep-E.T. Fedoration; Court's Copy.

Sept. 21—Application of deft. #1 to shorten time for responding to request for admissions; c/m 9/21/73.

Sept. 21—Requests of defts. for admissions; c/s 9/21/73.

Sept. 26—Answer of deft. U.S.A. to the complaint; c/m 9-24-73; appearance of M. Karl Shurtliff, Dept. of Justice.

Sept. 26—Calendared CAL/N.

Oct. 2—Opposition by pltfs to defts' application for order shortening time for responding to request for admissions; c/m 10-1-73.

Oct. 3—Order directing pltfs' request for admissions be served & filed with the Clerk of Court not later than 12:00 P.M., 10-15-73, without prejudice to motion of pltfs' for an extension or time within which to respond or the motion by any party for a continuance of trial, until 10-16-73. (N) Robinson, J., (U.S.C.A.,) Corcoran, J. Waddy, J.

Oct. 15—Deposition of Oretha Haley taken on Oct. 4, 1973.

Oct. 15—Deposition of Nils R. Douglas taken on Oct. 4, 1973.

Oct. 15—Deposition of Clarence O. Dupuy taken on Oct. 5, 1973.

Oct. 15—Deposition of Joseph V. DiRosa taken on Oct. 5, 1973.

Oct. 15—Deposition of Cecil W. Carter taken on Oct. 4, 1973 with attachment.

Oct. 15—Deposition of John D. Lambert, Jr. taken on Oct. 3, 1973.

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Oct. 15—Deposition of Philip C. Ciacci, taken on Oct. 3, 1973.

Oct. 15—Response of pltfs to deft's request for admissions; c/s 10-15-73.

Oct. 16—Deposition of Johnny Jackson, Jr. taken on Oct. 2, 1973.

Oct. 17—Trial Resumed; respited until 10-18-73, 10:00 A.M.; (Rep-V.Marshall) Robinson, J., (U.S.C.A.), Corcoran, J., Waddy, J., (U.S.D.C.)

Oct. 18—Trial Resumed; respited until further notice; (Rep-E.Ossen, A.M. & P.M., Al Koffman, A.M. & Eugene Fedoration, P.M.) Robinson, J., (U.S.C.A.), Corcoran, J., Waddy, J., (U.S.D.C.)

Oct. 24—Transcript of proceedings, August 10, 1973, Vol 11, Pages 172-399 (a) (g); Reporter: Vernell A. Marshall (Court Copy).

Oct. 24—Transcript of proceedings, October 17, 1973, Vol III, pages 400-474/499 500-562/600; Reporter: Vernell A. Marshall (Court Copy).

Oct. 24—Transcript of proceedings, October 18, 1973, Vol IV, pages 600 (a)-645/670, 671-708/715, 716-762/766, 767-775; Reporter: Vernell A. Marshall (Court Copy).

Oct. 24—Letter to Judge Waddy from Vernell A. Marshall, Court Reporter in re fees for transcripts. approved Waddy, J.

Oct. 29—Objection by pltfs to admission of defts' exhibit No. 31; c/m 10-26-73.

Nov. 20—Motion of non-incumbent candidates for the New Orleans City Council for leave to file as amici curiae a petition to expedite case memorandum; exhibit; c/m 11-20-73, appearance of Arthur F. Mathews and John H. Korns (1666 K St., N.W. 20006).

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Nov. 23—Brief by pltfs; appendix A; c/m 11-23-73.

Nov. 28—Reply by pltfs to motion of non-incumbent candidates for leave to file petition as amicus curiae; c/m 11-27-73.

Dec. 4—Order granting pltff's. motion to leave to file on behalf of Seven-Non-Incumbent Candidates for New Orleans City Council as amici curiae and all parties are hereby instructed to respond to the petition within ten (10) days of the filing of this order. (N) Waddy, J.

Dec. 11—Motion of pltfs' for entry of default pursuant to rule 55(a), FRCP; P&A; c/m 12-11-73.

Dec. 12—Trial Brief by Intervenors; c/m 12-7-73.

Dec. 12—Deposition of Suleiman Azeez taken on Oct. 24, 1973 for the deft.

Dec. 13—Post-Trial Brief of defts; Appendix A&B; Proposed Findings of Fact and Conclusions of Law; c/s 12-13-73.

Dec. 14—Response of United States of petition of Amici Curiae; c/m 12-14-73.

Dec. 17—Response of pltfs' to Amici Curiae Petition to expedite case and set timetable for elections; c/m 12-14-73.

Dec. 19—Response of intervenors to petition of Amici Curiae; c/m 12-17-73.

Dec. 26—Reply brief by pltfs; c/m 12-26-73.

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Jan. 4—Opinion. (N) Robinson, J., (USCA), Corcoran, J. Waddy.

Jan. 4—Order dismissing petition of the amici curiae without prejudice to refiling in another forun. (N) Robinson J. (USDC), Corcoran, J., Waddy J.

1974

Jan. 17—Trial by three Judge Panel resumed & concluded; taken under advisement. Rep. V. Marshall. Robinson, USCA; Corcoran, J. & Waddy, J, USDC.

Mar. 15—Order substituting William B. Saxbe Attorney General instead of Elliot L. Richardson, (N) Robinson, J., (USCA), Corcoran, J. & Waddy, J.

Mar. 15—Opinion. Robinson, J., (USCA, Corcoran, J. & Waddy, J.

Mar. 15—Order denying plaintiffs motion for declaratory judgment; dismissing case, defts. and intervenors recover costs. (N) Robinson, J. (USCA), Corcoran, J. & Waddy, J.

Apr. 5—Notice of appeal by plaintiffs to the Supreme Court of the United States; c/m 4-5-74. Paid $5.00 by Stoner.

Oct. 24—Certified copy of Letter from Supreme Court of the United States noting probable jurisdiction.

Nov. 11—Copy of Letter from the United States Supreme Court requesting transmittal of record on appeal. (Orig. filed in CA. 338-73)

Nov. 29—Stipulation re Exhibits to be transmitted with record to the United States Supreme Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 1495-73

PETER H. BEER, 5855 Bellaire Drive, New Orleans, Louisiana

PHILIP C. CIACCIO, 7341 Springlake Drive,
New Orleans, Louisiana

JOSEPH V. DIROSA, 318 W. Lakeshore Parkway,
New Orleans, Louisiana

CLARENCE O. DUPUY, JR., 6941 Argonne Street,
New Orleans, Louisiana

JOHN D. LAMBERT, JR., 1560 Pressburg Street,
New Orleans, Louisiana

JAMES A. MOREAU, 6308 Pratt Drive,
New Orleans, Louisiana

Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans
Plaintiffs

vs.

UNITED STATES OF AMERICA and ELLIOT L. RICHARDSON, ATTORNEY GENERAL OF THE UNITED STATES, individually and in his official capacity, Washington, D. C.
Defendants

Complaint for Declaratory Judgment Under Voting Rights Act

1. This Court has jurisdiction over this action by virtue of Section 5 of the Voting Rights Act of 1965, 79 Stat. 439; 42 U.S.C. § 1973c.

2. Plaintiffs are six of the seven members of the Council of the City of New Orleans with respect to which the provisions of Section 5 of the Voting Rights Act of 1965, as amended, are in effect.

3. Plaintiffs seek to administer a change with respect to voting different from that in force prior to November 1, 1964.

4. The present Charter of the City of New Orleans, which was adopted by the people of the City of New Orleans, became effective on May 1, 1954. Pursuant to the provisions of this Charter, the Council of the City of New Orleans consists of seven members, two of whom are elected from the City-at-large and five of whom are elected from Districts consisting of geographical areas which are composed of different Wards of the City of New Orleans. Copy of the Charter of the City of New Orleans, Article III, Section 3-103, is attached hereto as Exhibit "A".

5. The boundaries of the Wards of the City of New Orleans have been in force many years, dating back to the Charter of the City of New Orleans, adopted by the Legislature of the State of Louisiana by Act 159 of 1912. These Ward boundaries are set out in the extract from Act 159 of 1912 which is attached hereto as Exhibit "B".

6. In some cases, these Ward boundaries go from the Mississippi River to the Lake Pontchartrain, while in other instances, these Ward boundaries are generally set out within the core of the City of New Orleans. (See map of the City of New Orleans, attached hereto as Exhibit "C" which delineates these boundaries. This map shows the Wards 1 to 17 by circled numerals.)

7. Pursuant to the provisions of the present Charter of the City of New Orleans (Sec. 3-103(3), Exhibit "A") the Council of the City of New Orleans is required to redistrict the five Councilmanic Districts of the City of New Orleans into equally populated districts following each decennial census of the United States.

8. In compliance with this requirement, the Council of the City of New Orleans passed Ordinance Number 4796

Mayor Council Series, a copy of which is attached hereto as Exhibit "D".

9. It was not mathematically possible to redistrict the Council by Wards of the City because the population of the various Wards differ. Therefore, the plan adopted generally provided that the districts would be composed of the Wards with Precincts from some Wards incorporated into adjacent districts in order to meet the equal population requirement. The districts as of this redistricting plan are set out in the annexed Exhibit "C" in block letters A-E.

10. This Ordinance Number 4796 Mayor Council Series was submitted on May 4, 1972 to the Attorney General of the United States because of the requirement of the Voting Rights Act of 1965, as amended.

11. On January 15, 1973, the Attorney General interposed an objection to this plan. See letter of the Attorney General attached hereto as Exhibit "E".

12. As seen from this letter, the reasons of the Attorney General for interposition do not object to this plan because of the vertical lines of the proposed districts going from the Mississippi River to the Lake Pontchartrain, which are the lines which some of the Wards and therefore some of the Districts have, but set out other reasons.

13. Subsequent thereto, the Council passed Ordinance No. 5154, Municipal Council Series, on May 3, 1973, which was an amendment to the original redistricting Ordinance. This plan was submitted to the Attorney General on May 9, 1973. A copy of that Ordinance is attached hereto as Exhibit "F".

14. On July 9, 1973, the Attorney General interposed an objection to this plan. See letter of the Attorney General attached hereto as Exhibit "G".

15. The Councilmanic Districts provided for by this second re-districting are set out on the attached Map as Exhibit "H". The wards are designated by circled numerals and the Districts are in block letters A-E.

16. The population of each of the Districts by black and white persons and by black and white registered voters is set out as follows:

FIRST PLAN POPULATION

REG. VOTERS (JUNE- 1973)

		BLACK	WHITE	BLACK
DISTRICT "A"	120,971	38,011	82,960	22.9%
DISTRICT "B"	117,378	69,440	47,938	47.6%
DISTRICT "C"	117,253	47,974	69,279	26.4%
DISTRICT "D"	118,337	51,447	66,890	37.5%
DISTRICT "E"	119,532	60,436	59,096	43.0%

SECOND PLAN POPULATION

REG. VOTERS (JUNE-1973)

		BLACK	WHITE	BLACK
DISTRICT "A"	117,901	36,665	81,236	22.8%
DISTRICT "B"	118,678	76,109	42,569	53.1%
DISTRICT "C"	119,023	42,651	76,372	23.6%
DISTRICT "D"	118,337	51,447	66,890	37.5%
DISTRICT "E"	119,532	60,436	59,096	43.0%

17. Many public hearings were had on these two plans and everyone was given an opportunity to be heard.

18. The next primary election for councilmen under Louisiana law will be on November 10, 1973, with the qualifying dates for this primary being in the latter part of August, 1973. The general election will be held in March, 1974, and the assumption of office will be in April, 1974.

19. The Council has for many months been trying to achieve a proper redistricting of the Council. Early in 1972, shortly after the final 1970 census figures were first

made available in October of 1971, the Council of the City of New Orleans passed the hereinbefore set out Ordinance 4796 M.C.S. (See Allegation No. 10) by a vote of 6-1, (Councilman Beer voting against). That Ordinance was thereafter disapproved by an Assistant Attorney General as hereinbefore set out and no further action was taken by the Council in connection therewith (See Allegation No. 11).

20. Shortly thereafter, in August, 1972, the Council passed Ordinances 4922 M.C.S. and 4923 M.C.S. The Ordinances would have essentially given the electorate the right to choose between retaining a seven-member Council, or expanding the Council to either nine or eleven members. (Even earlier, the Council had passed 4795 M.C.S. and 4851 M.C.S. to accomplish the same result but these Ordinances were subsequently held inoperative by judgment of the Civil District Court for the Parish of Orleans). The Mayor of the City of New Orleans, Hon. Moon Landrieu (hereinafter referred to as the Mayor), thereafter vetoed 4922 M.C.S. thus presenting the electorate with only two alternatives: either to keep the seven member Council or to replace it with an eleven member Council (Councilman DiRosa, Moreau, Dupuy and Beer voted to override the Mayor's veto, but the measure required a two-thirds vote by specific Charter provision and, hence, the veto stood).

21. The remaining proposals, in the form necessitated by the Mayor's veto, were submitted to the electorate and, after much campaigning in support of the proposal by various groups and organizations, the proposed expansion of the Council to eleven members failed by a very substantial margin of votes.

22. After this failure on the part of the various proponents of an expanded Council, the Council again turned to the job of reapportionment under the specific applicable mandate of the City Charter, but, almost immediately, Councilman Sapir introduced Ordinance 5026 M.C.S. which, again, provided for a charter change (again requiring a vote of the people) seeking to increase the Council to nine

members (Essentially the same proposal previously vetoed by the Mayor). Again the Council voted to submit the matter to the electorate. Again various groups and organizations campaigned for passage of the proposal. Again it failed and the Council continued to consist of seven members.

23. Thereafter the Council held numerous meetings with the director and various members of the Council Research Staff and held public hearings and meetings with a wide range of groups, individuals, and committees, in an effort to devise a workable, responsible and equitable plan.

24. Thereafter the Council deliberated Ordinance 5154 M.C.S., (See Allegation 13) which was essentially a plan that had been worked out by the Council Research Staff and its director at the suggestion of Councilman Moreau. The director and staff of the Council Research Department (all Civil Service classified personnel) had taken into consideration, on a totally impartial basis, all of the data and information obtained during the various public hearings, conferences, and meetings, hereinabove described, supplemented by their own exhaustive research. The plan which was painstakingly worked on, and finally submitted by the Council Research Staff (and, thereafter, proposed by Councilman Moreau) had many points of similarity with the plan proposed by the National Association for the Advancement of Colored People. (Districts "A" and "B" were *identical*).

25. The Council discussed and considered this plan which had then come to be identified as the "Moreau Plan" and in due course, the Council passed Ordinance 5154 M.C.S. by a vote of 6-1. (Councilman Sapir voting against).

26. Thereafter Ordinance 5154 M.C.S. was submitted, to the Office of the Attorney General of the United States for action under the provisions of Section 5 of the Voting Rights Act of 1965. Objection to the plan was interposed

by the Assistant Attorney General (See Allegation 14) without a full and fair apraisal of all relevant information.

27. Plaintiffs believe that the redistricting plan as contained in the Ordinance No. 5154 M.C.S. is a fair plan of redistricting which does not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race or color.

WHEREFORE, the premises considered, plaintiffs pray:

1. That the Court enter a Declaratory Judgment adjudging that the redistricting plan as contained in Ordinance No. 5154 M.C.S. does not violate the Voting Rights Act of 1965, as amended.

2. For such other general and equitable relief as the nature of the case may require.

Respectfully submitted,

/s/ BLAKE G. ARATA
Blake G. Arata
City Attorney
City of New Orleans

/s/ ERNEST L. SALATICH
Ernest L. Salatich
Assistant City Attorney
City of New Orleans
Room 2W23—City Hall
New Orleans, Louisiana 70112
(504) 529-4311

STONER, TREESE & RUFFNER

By: /s/ JAMES R. STONER
James R. Stoner
1000 Connecticut Avenue
Washington, D.C. 20036
(202) 293-2131

Counsel for Plaintiffs

Exhibit "A"

Section 3-101. Legislative Powers. (1) All legislative powers of the City shall be vested in the Council and exercised by it in the manner and subject to the limitations hereinafter set forth.

(2) The Council shall have the right to levy any and all classes of taxes, excises, licenses and fees necessary for the proper operation and maintenance of the municipality for the payment of debt, and for capital improvements that are not expressly prohibited by the Constitution.

Section 3-102. Number and Terms of Councilmen. The Council shall consist of seven members, of whom five shall be elected from districts and two from the City at large. The terms of councilmen shall be four years beginning on the first Monday in May next following their election except that a councilman selected to fill a vacancy shall serve only for the remainder of the unexpired term.

[1] Section 3-103. Councilmanic Districts. (1) The City shall be divided into five Councilmanic Districts. Each District shall serve as the basis for electing a district councilman. The five Districts shall be as follows:

(a) District "A" shall be composed of the Fourteenth Ward, the Fifteenth Ward, the Sixteenth Ward, and the Seventeenth Ward.

(b) District "B" shall be composed of the First Ward, the Tenth Ward, the Eleventh Ward, the Twelfth Ward, and the Thirteenth Ward.

(c) District "C" shall be composed of the Second Ward, the Third Ward, the Fourth Ward, the Fifth Ward, and the Sixth Ward.

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[1] The changes in the composition of the five councilmanic districts, as reflected herein, were effectuated by ordinance No. 2296 M.C.S., Adopted October 19, 1961.

(d) District "D" shall be composed of the Seventh Ward, and the Eighth Ward.

(e) District "E" shall be composed of the Ninth Ward.

(2) The wards referred to in this Section shall mean the seventeen wards of the City existing at the effective date of this Charter.

(3) It shall be the mandatory duty of the Council to redistrict the City by ordinance within six months after the official publication by the United States of the population of the City as enumerated in each decennial census. Each councilmanic district shall contain as nearly as possible the population factor obtained by dividing by five the City's population as shown by the decennial census. At the expiration of the six months period, if the Council shall have failed to redistrict the City as herein required, the members of the Council shall not receive any further salaries until the Council shall have adopted such ordinance, which may not be vetoed by the Mayor, and the Director of Finance shall not issue checks for such salaries for said periods.

Section 3-104. Qualifications of Councilmen. A councilman shall be a citizen of the United States and a qualified elector of the City, and shall not hold any other public office or position, the office of Notary Public, and office in the military or naval forces excepted. Candidates for Councilmen-at-large shall have been residents of the City for two years immediately preceding their election. Candidates for district councilmen shall have been residents of the districts from which elected for at least two years immediately preceding their election. Any councilman who removes his residence from the City or from the district from which he was elected shall thereby vacate his office.

Section 3-105. Election of Councilmen. (1) At the election to be held on the first Tuesday following the first

Monday of April, 1954, and every fourth year thereafter, one councilman shall be elected from each councilmanic district and two from the City at large. Each elector may vote for one district councilman from his district and may also vote for two councilmen-at-large.

(2) A vacancy in the office of any councilman shall be filled as follows:

(a) If the unexpired term is less than one year, the remaining members of the Council shall elect a citizen with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a regular meeting of the Council after reasonable notice of the vacancy to all remaining members of the Council. Should the Council fail to fill any vacancy within thirty days after its occurrence, the Mayor shall appoint a citizen with requisite qualifications to fill the vacancy for the unexpired term.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days and to be held within sixty days after the occurrence of the vacancy under the election laws of the State, at which time the electors of the City, or should the vacant office be that of a district councilman, the electors of that district, shall elect a citizen with requisite qualifications to fill the vacancy for the remainder of term; provided, that if any special or general election is to be held in the City after thirty days and within six months after occurrence of the vacancy, then the election shall be held in conjunction with such other election.

Exhibit "B"

[Act 159 of 1912 Section 1]

Rights, powers and authority

(h) The legislative, executive and judicial powers of the City of New Orleans shall extend to each and every matter of local and municipal governments. The enumeration of particular powers of this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated therein or implied thereby or appropriate to the exercise of such powers, it is intended that the City of New Orleans shall have and may exercise all powers, police or otherwise, which under the Constitution of the State of Louisiana, it will be competent for this charter specifically to enumerate. All powers of the City, whether expressed or implied, shall be exercised in the manner prescribed by this Charter, and if not prescribed therein, then in a manner provided for by ordinance or resolution of the Council, it being the intent thereof that this Charter shall never be construed as impairing or restricting the effect of the general grant of powers of local self-government, which are hereby bestowed.

(i) All property now publicly owned and standing in the name of the City of New Orleans, shall be operated by the City of New Orleans, as provided for in this Charter.

Section 2. Said city shall be divided into the following wards and municipal districts, to-wit:

[Act 159 of 1912 Section 2]

Boundaries of wards and districts

First Ward, First Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Thalia street, and thence along the said projected line to the center of Thalia street on the left bank of said river,

and thence along the center of Thalia street to the intersection of Claiborne Canal, and thence along the center of Claiborne Canal to the center of Felicity road, and thence along the center Felicity road to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river and the projected line of the center of Felicity road, and thence along the center of the Mississippi river to the point of commencement.

Second Ward, Second Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Julia street, and thence along the said projected line to the center of Julia street on the left bank of said river, and thence along the center of Julia street to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the center of Carrollton avenue, and thence along the center of Carrollton avenue to the center of Melpomene Canal, and thence along the center of Melpomene Canal to the center of Claiborne Canal, and thence along the Center of Claiborne Canal to the center of Thalia street, and thence along the center of Thalia street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line on the center of Thalia, and thence along the center of the Mississippi river to the point of commencement.

Third Ward, Third Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Canal street, and thence along, the said projected line to the center of Canal street on the left bank of said river, and thence along the center of Canal street to the center of the old Metairie road, and thence along the center of the old Metairie road to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the center of Rampart street, and thence along the center of Rampart street to the center of Julia street, and thence

along the center of Julia street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Julia street, and thence along the center of the Mississippi river to the point of commencement.

Fourth Ward, Fourth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Canal street, and thence along the said projected line to the center of Canal street on the left bank of the said river, and thence along the center of Canal street to the center of the old Metairie road, and thence along the center of the old Metairie road to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the south shore of Lake Pontchartrain, and thence on the projected line of the center of said New Basin Canal to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the center of Orleans Canal, and thence along the said projected line of the center of the said Orleans Canal to the south shore of Lake Pontchartrain, and thence along the center of the Orleans Canal to the center of the old Metairie road, and thence along the center of the old Metairie road to the center of St. Louis street, and thence along the center of St. Louis street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of St. Louis street, and thence along the center of the Mississippi river to the point of commencement.

Fifth Ward, Fifth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of St. Louis street, and thence along the said projected line of the center of St. Louis street on the left bank of said river, and thence along the center of St. Louis street to the center

of the old Metairie road, and thence along the center of the old Metairie road to the center of the Orleans Canal, and thence along the center of the Orleans Canal to the south shore of Lake Pontchartrain, and thence on a projected line of the center of the said Orleans Canal to a point in the middle of Lake Pontchartrain to the projected line of the center of Bayou St. John, and thence along the said projected line of the center of Bayou St. John to the south shore of Lake Pontchartrain, and thence along the center of Bayou St. John to the center of St. Philip street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of St. Philip street, and thence along the center of the Mississippi river to the point of commencement.

Sixth Ward, Sixth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of St. Philip street, and thence along said projected line of the center of St. Philip street, and on the left bank of said river, and thence along the center of Bayou St. John, and thence along the center of Bayou St. John to the center of Esplanade street, and thence along the center of Esplanade street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Esplanade street, and thence along the center of the Mississippi river to the point of commencement.

Seventh Ward, Seventh Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Esplanade street, and thence along the said projected line to the center of Esplanade street on the left bank of said river, and thence along the center of Esplanade street to the center of Bayou St. John, and thence along the center of Bayou St. John and Cut Off to the south shore of Lake

Pontchartrain, and thence on the projected line of the center of said Bayou St. John to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the center of Elysian Fields street, and thence along the said projected line of the center of Elysian Fields street to the south shore of Lake Pontchartrain, and thence along the center of Elysian Fields street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Elysian Fields street, and thence along the center of the Mississippi river to the point of commencement.

Eighth Ward, Eighth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Elysian Fields street, and thence along the said projected line to the center of Elysian Fields street on the left bank of the said river, and thence along the center of Elysian Fields street to the south shore of Lake Pontchartrain, and thence on the projected line of the center Elysian Fields street to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the Center of People's avenue, and thence along the said projected line of the center of People's avenue to the south shore of Lake Pontchartrain, and thence along the center of People's avenue to the center of Lafayette avenue, and thence along the center of Lafayette avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Lafayette avenue, and thence along the center of the Mississippi river to the point of commencement.

Ninth Ward, Ninth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Lafayette avenue, and thence along the said projected line

to the center of Lafayette avenue, on the left bank of said river, and thence along the center of Lafayette avenue to the center of People's avenue, and thence along the center of People's avenue to the south shore of Lake Pontchartrain, and thence on the projected line of the center of People's avenue to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the center of the Rigolets, and thence along the center of the Rigolets to the Lake Borgne, and thence along the main shore of Lake Borgne, including all islands within one marine league distance thereof, to the center of Bayou Bienvenu, and thence along the center of Bayou Bienvenu to the Fisherman's Canal, and thence along the center of the Fisherman's Canal to the line of the south side of Florida Walk, and thence along the said line of Florida Walk to the lower line of the United States Barracks, and thence along the said line of the United States Barracks to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the said United States Barracks, and thence along the middle of the Mississippi river to the point of commencement.

Tenth Ward, Tenth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Felicity road, and thence along the said projected line to the center of Felicity road on the left bank of said river, and thence along the center of Felicity road to the center of Melpomene Canal, and thence along the center of Melpomene Canal to its intersection with First street, and thence along the center of First street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of First street, and thence along the center of the Mississippi river to the point of commencement.

Eleventh Ward, Eleventh Representative, bounded as follows—viz.: Commencing at a point in the middle of

the Mississippi river on the projected line of the center of First street, and thence along the said projected line to the center of First street on the left bank of said river, and thence along the center of First street to the center of the Melpomene Tail Race, and thence along the center of the Melpomene Tail Race to the center of Toledano street, and thence along the center of Toledano street, to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Toledano street, and thence along the center of the Mississippi river to the point of commencement.

Twelfth Ward, Twelfth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Toledano street, and thence along the said projected line to the center of Toledano street on the left bank of said river, and thence along the center of Toledano street to the center of Broad street, and thence along the center of Broad street to the center of Napoleon avenue, and thence along the center of Napoleon avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Napoleon avenue, and thence along the center of the Mississippi river to the point of commencement.

Thirteenth Ward, Thirteenth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Napoleon avenue, and thence along the said projected line to the center of Napoleon avenue on the left bank of said river, and thence along the center of Napoleon avenue to the center of Broad street, and thence along the center of Broad street to the center of Peters avenue, and thence along the center of Peters avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center

of Peters avenue, and thence along the center of the Mississippi river to the point of commencement.

Fourteenth Ward, Fourteenth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Peters avenue and thence along the said projective line to the center of Peters avenue on the left bank of said river, and thence along the center of Peters avenue to Broad street, and thence along the center of Broad street to the center of Toledano street, and thence along the center of Toledano street to the center of Melpomene Tail Race, and thence along the center of Melpomene Tail Race, to the center of Lowerline street, and thence along the center of Lowerline street to the left bank of the Mississippi river and thence to a point in the middle of the Mississippi river on the projected line of the center of Lowerline street, and thence along the center of the Mississippi river to the point of commencement.

Sixteenth Ward, Sixteenth Representative District, bounded as follows—viz: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Lowerline street, and thence along the said projected line to the center of Lowerline street on the left bank of said river, and thence along the center of Lowerline street to the center of the Melpomene Tail Race, and thence along the center of the Melpomene Tail Race to the center of Carrollton avenue, and thence along the center of Carrollton avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Carrollton avenue, and thence along the center of the Mississippi river to the point of commencement.

Seventeenth Ward, Seventeenth Representative District, bounded as follows—viz: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Carrollton avenue, and thence along said projected line to the center of Carrollton avenue on the left bank of

said river, and thence along the center of Carrollton avenue to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the south shore of Lake Pontchartrain, and thence on the projected line of the center of the New Basin Canal to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the center of the Upperline Canal, and thence along the said projected line of the center of the said Upperline Canal to the south shore of Lake Pontchartrain, and thence along the center of the Upperline Canal and Upperline street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Upperline Canal, and thence along the center of the Mississippi river to the point of commencement.

Fifteenth Ward, Fifteenth Representative District, bounded as follows—viz: All that part of the Parish of Orleans situated on the right bank of the Mississippi river, included within the boundaries described in the preceding section.

The First Municipal District shall include all that part of the Parish of Orleans forming the First, Second and Third Wards, as hereinbefore described.

The Second Municipal District shall include all that part of the Parish of Orleans forming the Fourth, Fifth and Sixth Wards, as hereinbefore described.

The Third Municipal District shall include all that part of the Parish of Orleans forming the Seventh, Eighth and Ninth Wards, as herinbefore described.

The Fourth Municipal District shall include all that part of the Parish of Orleans forming the Tenth and Eleventh Wards, as hereinbefore described.

The Fifth Municipal District shall include all that part of the Parish of Orleans situated on the right bank of the Mississippi river included within the boundaries hereinbefore described.

Exhibit "D"

ORDINANCE
(As Amended)

CITY OF NEW ORLEANS

City Hall, January 15, 1972

Calendar No. 5194

No. 4796 MAYOR COUNCIL SERIES

BY: COUNCILMAN MOREAU

AN ORDINANCE to redistrict the City of New Orleans pursuant to Section 3-103 (3) of the Home Rule Charter of the City of New Orleans.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That effective on the first Monday in April, 1974, Section 3-103 (1) of the Home Rule Charter of the City of New Orleans be amended to read as follows:

(a) District A shall be composed of: Ward 16, Ward 17; Ward 14 less precincts 1, 2, and 3; and Ward 15 less precincts 1, 2, 3, 4, 5, 6, 7, and 8.

(b) District B shall be composed of: Ward 1; Ward 10; Ward 11; Ward 12; Ward 13; Ward 14, precincts 1, 2, and 3; and Ward 15, precincts 3, 4, 7, and 8.

(c) District C shall be composed of: Ward 2; Ward 3; Ward 4; Ward 5; Ward 6; Ward 7, precincts 12, 13, 15, 16, 17, 17A, 18, 19, 27A; Ward 15, precincts 1, 2, 5, and 6.

(d) District D shall be composed of: Ward 8; Ward 7 less precincts 12, 13, 15, 16, 17, 17A, 18, 19, and 27A; and Ward 9, precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, and 25A.

(e) District E shall be composed of: Ward 9 less precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25 and 25A.

SECTION 2. That precincts referred to in Section 1 shall mean those precincts existing at the date of final passage of this ordinance; however, nothing herein shall be construed as limiting the power of the City government of New Orleans to adjust precinct boundaries in accordance with L.R.S. 18:586 provided that the geographical boundaries of the Councilmanic Districts described in Section 1 are maintained.

SECTION 3. That candidates for the Offices of Councilman-at-large and Councilmen for each of the Districts, as hereinabove fixed and established, who are to be voted on in the General Municipal Election to be held on the Tuesday following the first Monday of March, 1974, shall be eligible to qualify as such with the respective political party committees charged with the duty of calling and conducting primary elections on such dates as may be fixed by said committees, and be voted on in such party primary elections, in accordance with the provisions of the election laws of the State.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS
MARCH 2, 1972

JOSEPH V. DI ROSA
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on March 2, 1972

Approved: March 3, 1972

MOON LANDRIEU
MAYOR

Returned by the Mayor on March 3, 1972 at 3:30 P.M.

ROGER L. SARRAT
CLERK OF COUNCIL

mlm

Exhibit "E"

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

Jan. 15, 1973

Mr. Ernest L. Salatich
Assistant City Attorney
Department of Law
Room 2W23
City of New Orleans
City Hall
New Orleans, Louisiana 70112

Dear Mr. Salatich:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of City Council Ordinance 4796 M.C.S. which reapportioned the councilmanic districts of the City of New Orleans. This submission was received by this Department on November 15, 1972.

We have given careful consideration to the submitted changes and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts. Moreover, it does not appear that the district lines are drawn as they are because of any compelling governmental need and they do not reject numeric population configurations or considerations of district compactness or regularity of shape. Under these circumstances we cannot conclude, as we must under the Voting Rights Act, that this plan of reapportionment for the New Orleans Council will not have a racially discriminatory effect on voting. Con-

sequently, on behalf of the Attorney General I must interpose an objection.

We have reached this conclusion reluctantly because we fully understand the complexities facing the city in designing a reapportionment plan to satisfy the needs of the city and its citizens and, simultaneously, to comply with the mandates of the federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable this reapportionment plan.

In this connection, I wish to bring to your attention our receipt on January 12, 1973, of your City Council Ordinance 5026 M.C.S. which calls for a referendum election on March 20, 1973, on the question of increasing the size of the City Council from seven to nine members. We will review that submission and let you know the Attorney General's determination as soon as possible. However, I also wish to point out that should the increase in the size of the council be approved at the referendum, any districting plan drawn up as a result must also meet the clearance requirements of Section 5.

Sincerely,

/s/ David L. Norman
David L. Norman
Assistant Attorney General
Civil Rights Division

Exhibit "F"

City of New Orleans

city hall, december 7, 1972

calendar no. 5475

No. 5154 Mayor Council Series

By: Councilman Moreau

An Ordinance to amend and reordain Ordinance No. 4796 M.C.S., as amended, adopted March 2, 1972, redistricting the City of New Orleans pursuant to Section 3-103 (3) of the Home Rule Charter of the City of New Orleans.

Section 1. The Council of the City of New Orleans Hereby Ordains, that Ordinance No. 4796 M.C.S., as amended, be amended and reordained, and that effective on the first Monday in April, 1974, Section 3-103 (1) of the Home Rule Charter of the City of New Orleans be amended to read as follows:

District A shall be composed of Ward 13; Ward 14; Ward 16; Ward 17; Ward 3, precincts 17, 18, 19, 20; and Ward 4, precincts 11, 12, 15, 16, 16A, 19, 20, 20A, 21, 21A, 22, and 23.

District B shall be composed of Ward 1; Ward 2; Ward 10; Ward 11; Ward 12; and Ward 3, less precincts 17, 18, 19, and 20.

District C shall be composed of Ward 5; Ward 6; Ward 15; Ward 4, less precincts 11, 12, 15, 16, 16A, 19, 20, 20A, 21, 21A, 22, and 23; and Ward 7, precincts 12, 13, 15, 16, 17, 17A, 18, 19, and 27A

District D shall be composed of Ward 8; Ward 7, less precincts 12, 13, 15, 16, 17, 17A, 18, 19, and 27A; and Ward 9, precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, and 25A

District E shall be composed of Ward 9, less precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, and 25A.

SECTION 2. That precincts referred to in Section 1 shall mean those precincts existing at the date of final passage of this ordinance; however, nothing herein shall be construed as limiting the power of the City government of New Orleans to adjust precinct boundaries in accordance with L.R.S. 18:586 provided that the geographical boundaries of the Councilmanic Districts described in Section 1 are maintained.

SECTION 3. That candidates for the Offices of Councilman-at-Large and Councilmen for each of the Districts, as hereinabove fixed and established, who are to be voted on in the General Municipal Election to be held on the Tuesday following the first Monday of March, 1974, shall be eligible to qualify as such with the respective political party committees charged with the duty of calling and conducting primary elections on such dates as may be fixed by said committes, and be voted on such party primary elections, in accordance with the provisions of the election laws of the State.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS
May 3, 1973

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on May 3, 1973

*Approved: .....
Disapproved: .....
MAYOR

Returned by the Mayor May 14, at 2:15 P.M.

JOSEPH C. PETERSON,
CLERK OF COUNCIL

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*NOTE: This ordinance was returned by the Mayor on May 14, 1973, at 2:15 P.M., and the same was neither approved nor disapproved by the Mayor. Therefore, said ordinance became effective at 12:00 o'clock Noon on May 13, 1973, in accordance with Section 3-113 (2) of the City Charter.

Exhibit "G"

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

July 9, 1973

Mr. Ernest L. Salatich
Assistant City Attorney
Department of Law
Room 2W23
City Hall
New Orleans, Louisiana 70112

Dear Mr. Salatich:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of City Council Ordinance 5154 M.C.S. which reapportioned the councilmanic districts of the City of New Orleans. This submission was received by this Department on May 10, 1973.

We have given careful consideration to the submitted changes and the supporting information as well as data complied by the Bureau of the Census and information and comments from interested parties. In addition we have utilized the information and data which you had previously provided this office in connection with our consideration of Ordinance 4796 M.C.S., pursuant to Section 5 of the Voting Rights Act of 1965.

Our analysis shows that the boundary lines prescribed by Ordinance 5154 M.C.S. appear to effect a dilution of black voting strength in the same manner as did the boundary lines prescribed in Ordinance 4796 M.C.S. to which an objection was interposed on behalf of the Attorney General on January 15, 1973. Under these circumstances we cannot conclude, as we must under the Voting Rights Act of 1965, that this plan of reapportionment for the New Orleans City Council will not have a racially discriminatory effect on voting. Consequently, on behalf of the Attorney

General I must interpose an objection to the reapportionment plan outlined in Ordinance 5154 M.C.S.

While we recognize that there are significant differences between the reapportionment plans proposed in Ordinance numbers 4796 and 5154 especially in regard to the number of non-contiguous districts and the population by race of proposed District B, Ordinance 5154 M.C.S. nevertheless combines a number of black voters with a larger number of white voters in four of the five districts. Moreover, the district lines in the instant submission do not appear to have been based on any compelling governmental need or to reflect numeric population configurations or considerations of district compactness or regularity of shape.

Our evaluation of Ordinance numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east to west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and the south of the city resulting in districts with more white than black voters.

Although the shape of the submitted districts may have been in part based upon the shape of the seventeen wards in New Orleans, the wards do not of themselves define official boundaries bearing upon the election of or representation by city council members, and adherence to the traditional shape of the wards may not serve to justify the resulting prohibited dilution of black voting strength under Section 5.

We do not mean by this analysis to imply that other reapportionment plans based upon vertical districts will necessarily divide the black neighborhoods in the city to the degree found objectionable here. We have determined, however, that a dilutive result similar to that found in the

submitted plan is difficult to avoid when such districts are utilized to the extent found in the submitted plan, and that the extent to which such districts were utilized is not necessary to achieve a successful reapportionment of the city's population.

If you desire any further explanation of the basis for the objection herein, or believe that such further explanation would be helpful in fashioning a redistricting plan which avoids the objectionable features of the submitted plan, please do not hesitate to contact us. Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable this reapportionment plan.

Sincerely,

/s/ J. STANLEY POTTINGER
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

IN THE UNITED STATES COURT FOR THE DISTRICT OF COLUMBIA

[Caption Omitted]

Civil Action No. 1495-73

Answer

Comes now the defendant, United States of America, by and through its attorneys, and answers as follows:

1. The United States admits the allegations of paragraph 1 of the Complaint.

2. The United States admits the allegations of paragraph 2 of the Complaint.

3. The United States admits the allegations of paragraph 3 of the Complaint.

4. The United States admits the allegations of paragraph 4 of the Complaint.

5. The United States admits the allegations of paragraph 5 of the Complaint.

6. The United States admits the allegations of paragraph 6 of the Complaint.

7. The United States admits the allegations of paragraph 7 of the Complaint.

8. The United States admits the allegations of paragraph 8 of the Complaint.

9. The United States admits the allegations of paragraph 9 of the Complaint.

10. The United States denies the allegations of paragraph 10 of the Complaint wherein it is alleged that Ordinance No. 4796 Mayor Council Series was submitted to the Attorney General of the United States on May 4, 1972. Answering further the United States admits that Ordinance No. 4796 Mayor Council Series was submitted, pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, to the Attorney General of the United States.

11. The United States admits the allegations of paragraph 11 of the Complaint.

12. The United States denies the allegations of paragraph 12 of the Complaint.

13. The United States admits the allegations of the first and third sentences of paragraph 13 of the Complaint insofar as such allegations are intended to refer to Ordinance No. 5154 Mayor Council Series rather than to alleged Ordinance No. 5154 Municipal Council Series. The United States denies the allegations of the second sentence of paragraph 13 of the Complaint wherein it is alleged that Ordi-

nance No. 5154 was submitted to the Attorney General on May 9, 1973. The United States admits that Ordinance No. 5154 was submitted, pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, to the Attorney General of the United States.

14. The United States admits the allegations of paragraph 14 of the Complaint.

15. The United States admits the allegations of paragraph 15 of the Complaint.

16. The United States denies the allegations of paragraph 16 of the Complaint concerning the population, by race, of each of the districts for the first plan. The United States admits the allegations of paragraph 16 of the Complaint concerning the population, by race, of each of the districts for the second plan. The United States is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 16 of the Complaint concerning the percentage of black registered voters as of June, 1973.

17. The United States is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. The United States admits the allegations of paragraph 18 of the Complaint.

19. The United States denies the allegations of the first sentence of paragraph 19 of the Complaint. The United States admits that Ordinance No. 4796 M.C.S. was passed, by a vote of 6-1, by the Council of the City of New Orleans. The United States admits that after Ordinance No. 4796 M.C.S. was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended, an objection was interposed to the implementation of that ordinance by an Assistant Attorney General on behalf of the Attorney General. The United States further admits that to the best of its

knowledge and belief no further action was taken by the City Council in connection with Ordinance No. 4796 M.C.S.

20. The United States admits that in August 1972 the City Council passed Ordinances Nos. 4922 M.C.S. and 4923 M.C.S.. The United States admits that Ordinance Nos. 4922 and 4923 were proposals to amend the city charter via referenda elections to increase the size of the City Council from 7 to 9 members or from 7 to 11 members. The United States further admits that the Mayor of the City of New Orleans thereafter vetoed Ordinance No. 4922 and that the veto was not overridden by the City Council.

21. The United States denies the allegations of paragraph 21 of the Complaint wherein it is alleged that "proposals" were submitted to the electorate. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraps 21 of the Complaint wherein it is alleged that ". . . after much campaigning in support of the proposal by various groups and organizations, the proposed expansion of the council to eleven members failed by a very substantial margin of voters." Answering further the United States admits that a majority of the ballots cast in the election on Ordinance No. 4923 M.C.S. did not favor the adoption of the City Charter amendment set out therein.

22. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of that portion of the first sentence of paragraph 22 of the Complaint down to, and including, the word "immediately" set out in line 4 of paragraph 22. The United States admits the allegations of that portion of the first sentence of paragraph 22 of the Complaint from, and including, the words "Councilman Sapir" set out in line 4 of paragraph 22. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of paragraph 22 of the Complaint. The United States admits the allegations of the

second and fourth sentences of paragraph 22 of the Complaint.

23. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Complaint.

24. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first and second sentences of paragraph 24 of the Complaint. The United States admits that Districts A and B of Ordinance 5154 M.C.S. were identical to proposals for two districts in a redistricting plan proposed to the City Council by the National Association for the Advancement of Colored People.

25. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of that portion of the first sentence of paragraph 25 of the Complaint to, and including, the word "course" set out in line 3 of paragraph 25. The United States admits the remaining allegations of paragraph 25 of the Complaint.

26. The United States admits the allegations of the first sentence of paragraph 26 of the Complaint. The United States denies the allegations of the second sentence of paragraph 26 of the Complaint. Answering further the United States admits that pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, an objection was interposed to the implementation of Ordinance No. 5154 M.C.S. by an Assistant Attorney General on behalf of the Attorney General.

27. The United States is without information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint wherein it is alleged that "[P]laintiffs believe that . . .". Answering further the United States denies that Ordinance No. 5154 M.C.S. is a fair plan of redistricting which does not have the purpose,

and will not have the effect, of denying or abridging the right to vote on account of race or color.

WHEREFORE, the United States prays that the Court deny the relief requested by plaintiffs.

J. STANLEY POTTINGER
Assistant Attorney General

/s/ M. KARL SHURTLIFF
GERALD W. JONES
M. KARL SHURTLIFF
NATHANIEL FRIENDS
Attorneys
Department of Justice
Washington, D.C. 20530
739-3849

[Certificate of Service Omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 1495-73

[Caption Omitted]

Motion To Intervene as Defendants

Johnny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush, on behalf of themselves and all others similarly situated, move for leave to intervene as defendants in order to assert the defenses set forth in their proposed answer, a copy of which is attached hereto, on the following grounds:

1. This is an action brought by six of the seven members of the Council of the City of New Orleans pursuant to the Voting Rights Act of 1965, 79 Stat. 439; 42 U.S.C. § 1973c praying for a declaratory judgment that Ordinance No.

5154 of the City of New Orleans that redistricted the city as required by Article III, Section 3-103 of the Charter of the City of New Orleans does not ". . . have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." Petitioners are all black, adult citizens of the United States and of the State of Louisiana, and are registered voters of the Parish of Orleans, City of New Orleans, Louisiana. Petitioner Johnny Jackson, Jr. resides at 2814 Clouet Street and is registered to vote in Councilmanic District E. Petitioner Theodore Marchand resides at 2427 Caffin Avenue and is registered to vote in Councilmanic District A. Petitioner Larry Jones resides at 3919 Harmony Street and is registered to vote in Councilmanic District D. Petitioner James Singleton resides at 1931 Fourth Street and is registered to vote in Councilmanic District B. Petitioner Melvin Bush resides at 1430 Hermosa Street and is registered to vote in Councilmanic District A. Petitioners move to intervene on behalf of themselves and all black registered voters of the City of New Orleans whose relative voting power will be diluted unless city council elections are conducted under a non-discriminatory plan of redistricting.

2. In addition to being black registered votes of the City of New Orleans, petitioners are the plaintiffs in *Jackson, et al* v. *The Council of the City of New Orleans, et al.*, Civil Action No. 73-1862, filed in the United States District Court, Eastern District of Louisiana, on July 12, 1973,[1] two days after the objections to Ordinance No. 5154 were made, which includes in its prayer for relief a request that a master be appointed to redistrict the city in a non-discriminatory manner prior to the election scheduled for the fall of this year. The requested master was appointed on August 4 ,1973.

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[1] See Exhibit A.

3. Petitioners have an interest in the subject of this action both as black registered voters for whom the protections of Section 5 of the voting rights act were promulgated and as plaintiffs in *Jackson* v. *Council of the City of New Orleans* which, because of the immediacy of the councilmanic elections, they may as a practical matter be impaired or impeded from protecting as a result of the disposition of this action.

4. Plaintiffs have made allegations relating to the history of Ordinance No. 5154 and the general history of councilmanic districting practices in the City of New Orleans. Petitioners have a knowledge and understanding of said history superior to any of the named defendants, therefore their interests cannot be adequately represented unless they are permitted to intervene as defendants.

Respectfully submitted

Stanley A. Halpin, Jr.
Kidd, Katz & Halpin
906 Carondelet Building
226 Carondelet Street
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(504) 581-2688

Charles E. Cotton
Cotton, Jones & Fazande

Jack Greenberg
James M. Nabrit, III
Eric Schnapper
Charles E. Williams, III

Wiley Branton

Attorneys for Plaintiffs

/s/ James M. Nabrit, III
James M. Nabrit, III

Dated: August 8, 1973.

Exhibit "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 73-1862

Class Action

Section D

Johnny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush, on behalf of themselves and others similarly situated, *Plaintiffs*,

versus

The Council of the City of New Orleans; Joseph V. DiRosa, James A. Moreau, Philip C. Ciaccio, John D. Lambert, Jr., Clarence O. Dupuy, Jr., Eddie L. Sapir, and Peter H. Beer, members of the Council of the City of New Orleans; The City of New Orleans; and Maurice Landrieu, in his official capacity as Mayor of the City of New Orleans, *Defendants*.

Complaint

I. Jurisdiction

1. This is a class action brought pursuant to 42 U.S.C. § 1983 to redress violations of rights secured to plaintiffs by the Fourteenth and Fifteenth Amendments to the United States Constitution. Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 that the councilmanic districting arrangement provided by Section 3-103(1) of the Charter of the City of New Orleans violates their rights secured by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and injunctive relief prohibiting further implementation of said section and requiring that elections for the Council of the City of New Orleans be conducted under a constitutionally sufficient non-discriminatory redistricting plan to be devised by the Court. Plaintiffs further seek an injunction prohibiting members of the Council of the City of New Orleans from drawing their salaries due to their failure to effect a good faith redistricting in compliance with the United

States Constitution and the New Orleans City Charter. Jurisdiction is conferred on this Court by 28 U.S.C. Section 1343(3) and (4).

II. Parties

2. Plaintiffs are all black, adult citizens of the United States and of the State of Louisiana, and are registered voters of the Parish of Orleans, City of New Orleans, Louisiana. Plaintiff Johnny Jackson, Jr. resides at 2814 Clouet Street and is registered to vote in Councilmanic District E. Plaintiff Theodore Marchand resides at 2427 Chaffin Avenue and is registered to vote in Councilmanic District A. Plaintiff Larry Jones resides at 3919 Harmony Street and is registered to vote in Councilmanic District D. Plaintiff James Singleton resides at 1931 Fourth Street and is registered to vote in Councilmanic District B. Plaintiff Melvin Bush resides at 1430 Hermosa Street and is registered to vote in Councilmanic District A.

3. Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, plaintiffs sue on their own behalf and on behalf of the class of all registered voters and subclass of black registered voters of the City of New Orleans whose relative voting power will be diluted unless the forthcoming city council elections are conducted under a constitutionally sufficient non-discriminatory plan of redistricting. The members of the class and subclass are so numerous that joinder of all members is impracticable. There are questions of law or fact common to the claims of the class and subclass, the claims of the respective parties are typical of the claims of the respective class and subclass, and the representative parties will fairly and adequately protect the interests of the class and subclass.

4. Defendant the Council of the City of New Orleans (hereinafter the "city council") is the general legislative body of the city of New Orleans (hereinafter the "city charter") with power and duty of reapportioning itself. Defendants Joseph V. DiRosa, James A. Moreau, Philip C. Ciaccio, John D. Lambert, Jr., Clarence O. Dupuy, Jr.,

Eddie L. Sapir, and Peter H. Beer are the members of the city council.

5. Defendant the City of New Orleans exists pursuant to Article IV, Section 22 of the Constitution of the State of Louisiana and under a Home Rule Charter adopted by referendum election and which went into effect in May of 1954. Defendant Maurice Landrieu is the Mayor and chief executive officer of the City of New Orleans.

• • • • • • • • • •

III. Statement

6. The existing districting arrangement of the city council pursuant to Section 3-103(1) is grossly malapportioned having wide population variances between districts resulting in dilution of voting strength of persons in under-represented districts. According to the 1970 census, each councilmanic district should ideally represent 118,694 persons, but under said section the councilmanic districts according to the 1970 census have the following populations and deviations from the ideal:

District A—134,613; +13.41%
District B—108,769; — 8.36%
District C—100,811; —15.06%
District D—114,367; — 3.64%
District E—134,911; +13.66%.

7. The city council has attempted on two occasions to effect racially discriminatory plans of redistricting. On each occasion the Attorney General of the United States. Pursuant to Section 5 of the Voting Rights Act of 1965, invalidated the plan by entering an objection grounded on the fact that the plans would have the purpose and effect of denying or abridging the right to vote on account of race.

8. The first plan, city council Ordinance 4796 M.C.S. was objected to by the Attorney General on January 15, 1973, who stated correctly in his letter of objection that:

> Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which

> appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts. Moreover, it does not appear that the district lines are drawn as they are because of any compelling governmental need and they do not reflect numeric population configurations of district compactness or regularity of shape.

9. City council Ordinance 4796 M.S.C. was not a good faith effort to redistrict in accordance with constitutional guidelines and the city charter, but was, as characterized by the March 4, 1972 New Orleans *States-Item* editorial, a "reapportionment joke".

10. In spite of the clear mandate from the Attorney General that racially discriminatory redistricting would be unacceptable under Section 5 of the Voting Rights Act of 1965, the second plan of the city council, city council Ordinance 5154 M.C.S. incorporated the same type of defects which had prompted the Attorney General to object to the first plan.

11. Accordingly on July 9, 1973 the Attorney General entered his objection to city council Ordinance 5154 M.C.S. stating correctly in his letter of objection that:

> Our analysis shows that the boundary lines prescribed by Ordinance 5154, M.C.S. appear to effect a dilution of black voting strength in the same manner as did the boundary lines prescribed in Ordinance 4796, M.C.S., to which an objection was interposed on behalf of the Attorney General on January 15, 1973.
>
> While we recognize that there are significant differences between the reapportionment plans proposed in Ordinance Numbers 4796 and 5154, especially to the noncontiguous districts and the population by race of proposed District B, Ordinance 5154, M.C.S., nevertheless combines a number of black voters with a larger number of white voters in four of the five districts.

> Moreover, the district lines in the instant submission do not appear to have been based on any compelling governmental need or to reflect numeric population configurations or considerations of district compactness or regularity of shape.
>
> Our evaluation of Ordinance Numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east-west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and south of the city, resulting in districts with more white than black voters.
>
> Although the shape of the submitted districts have been in part based upon the shape of the 17 wards in New Orleans, the wards do not of themselves define official boundaries bearing upon the election of or representation by City Council members, and adherence to the traditional shape of the wards may not serve to justify the resulting prohibited dilution of black voting strength under Section 5.
>
> We do not mean by this analysis to imply that other reapportionment plans based upon vertical districts will necessarily divide the black neighborhoods in the city to the degree found objectionable here. We have determined, however, that a dilutive result similar to that found in the submitted plan is difficult to avoid when such districts are utilized to the extent found in the submitted plan and that the extent to which such districts were utilized is not necessary to achieve a successful reapportionment of the city's population.

12. City council Ordinance 4796 M.S.C. was not a good faith effort to redistrict in accordance with constitutional guidelines and the city charter, but was but another attempt to deprive black citizens of New Orleans of their right to an unfettered franchise and all voters of New Orleans of their right to elect the city council members under a constitutionally sufficient plan of apportionment.

13. In both ordinances, the city council has purposefully attempted to effect "slot machine" racial gerrymandering by constituting the districts in a vertical north to south, river to lake configuration, which, given the well-known racial residential patterns running east to west, would have the inevitable, predictable and fully anticipated effect of diluting the voting strength of black citizens of New Orleans.

14. The city council attempted to effect these two plans in spite of the fact that numerous black leaders testified before the city council outlining in minute detail the racially discriminatory nature of said plans and that the city council had before it a number of alternate plans.

15. Section 3-103(3) of the Charter of the City of New Orleans prescribes a "mandatory duty" upon the city council to redistrict itself within six months of the official publication of the United States decennial census and further provides that if the council fails to perform this mandatory duty, "the members of the Council shall not receive any further salaries until the Council shall have adopted such ordinance . . . and the Director of Finance shall not issue checks for such salaries for said periods." The actions and omissions of the city council and its individual members in failing to make a good faith effort to redistrict themselves in keeping with the constitutional one man, one vote mandate, the constitutional and federal statutory prohibition against racially discriminatory delineation of electoral districts, and the mandate of their own charter has resulted in the city council being without

a valid plan and without the prospect of devising a valid plan and the election process scheduled to begin in approximately one month. Unless this Court immediately appoints a special master to receive suggested redistricting plans and devise a plan which conforms to the one man, one vote mandate and the prohibition against racial discrimination and specifically avoids the racially discriminatory vertical arrangement of districts, plaintiffs and their class will be effectively denied the right to vote by virtue of being denied the right to elect members of the city council at the regularly scheduled elections under a constitutionally sufficient plan of apportionment.

IV. Violation of Law

16. The present apportionment of the city council provided by Section 3-103(1) of the city charter dilutes the relative strength of the class of voters residing in underrepresented councilmanic districts to such an extent as to violate the rights of plaintiffs and other voters similarly situated under the equal protection clause of the Fourteenth Amendment.

Second Count

17. As more fully set out above, the actions and omissions of the city council and its individual members in failing to devise in good faith a constitutionally sufficient non-discriminatory plan of apportionment have deprived and continue to deprive plaintiffs and the class and subclass they represent of their rights secured by the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Third Count

18. As more fully set out above, the actions of the city council and its individual members in failing to devise in good faith a constitutionally sufficient non-discriminatory

plan of apportionment within six months of the publication of the 1970 Census have deprived plaintiffs and their class of rights secured by the Charter of the City of New Orleans. The Court has pendent jurisdiction over this cause of action.

V. Equity

19. There is a real and actual controversy between the parties as described herein. Plaintiffs have no adequate remedy at law. Plaintiffs are suffering and stand to suffer irreparable injury as a result of the apportionment challenged herein and the failure of defendants the city council and its members to effect a constitutionally sufficient plan of redistricting, and that injury will continue and become hopelessly irreparable unless enjoined by this Court.

VI. Color of Law

20. All of the acts alleged in this complaint to have been done by defendants were done under color of law of the State of Louisiana and under color of the defendants' respective offices as officers or agents of the State.

VII. Prayer For Relief

21. Wherefore, plaintiffs respectfully pray,

a) That this Court immediately appoint a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure and direct said master to receive suggested plans of apportionment and expeditiously devise a plan of redistricting for the Council of the City of New Orleans which complies with the one man, one vote mandate, avoids racial discrimination and specifically avoids those racially discriminatory features found objectionable by the Attorney General of the United States, in prior plans of the city council invalidated under Section 5 of the Voting Rights Act of 1965.

Plaintiffs suggest that the Court appoint one of the following exceptionally qualified persons to serve as special master:

Dr. Jewel L. Prestage
Professor of Political Science
Southern University, Baton Rouge, Louisiana
Visiting Professor of Political Science,
Louisiana State University in New Orleans

Mr. Peter W. Dangerfield
President, Metro Consulting and Research
4224 South Claiborne Avenue
New Orleans, Louisiana

b) That defendants the City of New Orleans and Maurice Landrieu, Mayor of the City of New Orleans, be enjoined from paying and that defendants the individual members of the Council of the City of New Orleans be enjoined from receiving any further salaries of the city council members until and unless the city council adopts a good faith constitutionally sufficient plan of apportionment.

c) That defendants be ordered to place into escrow the salaries of the members of the city council to secure payment of compensation to the special master, plaintiffs' expenses, and reasonable attorney's fees in this litigation.

d) That the Court issue a declaratory judgment that the apportionment of the city council under Section 3-103(1) is unconstitutional and violative of the constitutional rights of plaintiffs and others similarly situated, pursuant to 28 U.S.C. 2201.

e) That the Court issue preliminary and permanent injunctions restraining defendants from further implementing Section 3-103 of the city charter.

f) That the Court issue preliminary and permanent injunctions requiring defendants to implement a plan of re-

districting which is racially non-discriminatory and conforms to the equal protection clause of the Fourteenth Amendment.

g) That the Court award plaintiffs their court costs, expenses, and reasonable attorney's fees.

h) Plaintiffs further pray for such additional relief as is just and equitable.

Respectfully submitted,

STANLEY A. HALPIN, JR.
KIDD, KATZ & HALPIN

CHARLES E. COTTON
COTTON, JONES & FAZANDE

CHARLES WILLIAMS
ERIC SCHNAPPER
JACK GREENBERG
JAMES NABRIT III

Attorneys for Plaintiffs

by STANLEY A. HALPIN, JR.
Stanley A. Halpin, Jr.
Trial Attorney

Of Counsel:

DAVID J. DENNIS
1110 Royal Street
New Orleans, Louisiana

DATED: July 12, 1973

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 1495-73

[Caption Omitted]

Points And Authorities

Petitioners seek to intervene in the instant action to insure that their interests as described in the motion to intervene are adequately protected. It has previously been held that such an intervention is proper. *City of Petersburg, Virginia* v. *United States,* 354 F. Supp. 1021 (U.S. D.C. Dist. Col. 1972); *City of Richmond* v. *United States,* U.S. D.C. Dist. Col., Civil Action No. 1718-72.

WHEREFORE petitioners pray that their motion be granted.

Respectfully submitted,

STANLEY A. HALPIN, JR.
KIDD, KATZ & HALPIN

CHARLES E. COTTON
COTTON, JONES & FAZANDE

JACK GREENBERG
JAMES M. NABRIT, III
ERIC SCHNAPPER
CHARLES E. WILLIAMS, III

WILEY BRANTON

Attorneys for Plaintiffs

by /s/ JAMES M. NABRIT, III
James M. Nabrit, III

UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA

Civil Action No. 1495-73

[Caption Omitted]

Answer of Intervenors

1. Intervenors admit the allegations of paragraph "1" of the complaint.

2. Intervenors admit the allegations of paragraph "2" of the complaint.

3. Intervenors admit the allegations of paragraph "3" of the complaint.

4. Intervenors admit the allegations of paragraph "4" of the complaint.

5. Intervenors admit the allegations of paragraph "5" of the complaint.

6. Intervenors are without information sufficient to form a belief as to the truth of the allegations of paragraph "6" of the complaint.

7. Intervenors admit the allegations of paragraph "7" of the complaint.

8. Intervenors admit the allegations of paragraph "8" of the complaint.

9. Intervenors admit the allegations of paragraph "9" of the complaint, except that they are without information sufficient to form a belief as to the truth of the allegation that it was not mathematically possible to redistrict the Council by wards.

10. Intervenors admit the allegations of paragraph "10" of the complaint.

11. Intervenors admit the allegations of paragraph "11" of the complaint.

12. Intervenors deny the allegations of paragraph "12" of the complaint.

13. Intervenors admit the allegations of paragraph "13" of the complaint.

14. Intervenors admit the allegations of paragraph "14" of the complaint.

15. Intervenors admit the allegations of paragraph "15" of the complaint.

16. Intervenors are without sufficient information to form a belief as to the truth of the allegations of paragraph "16" of the complaint.

17. Intervenors admit the allegations of paragraph "17" of the complaint.

18. Intervenors admit the allegations of paragraph "18" of the complaint.

19. Intervenors deny the allegations of the first sentence of paragraph "19" of the complaint. Intervenors are without sufficient information to form a belief as to the truth of the other allegations of paragraph "19" of the complaint.

20. Intervenors admit the allegations of paragraph "20" of the complaint.

21. Intervenors admit the allegations of paragraph "21" of the complaint.

22. Intervenors admit the allegations of paragraph "22" of the complaint.

23. Intervenors deny the allegation of paragraph "23" of the complaint that an effort was made to devise a workable, responsible and equitable plan, and are without information sufficient to form a belief as to the truth of the other allegations of the complaint.

24. Intervenors deny the allegations of paragraph "24" of the complaint.

25. Intervenors admit the allegations of paragraph "25" of the complaint.

26. Intervenors deny the allegations of paragraph "26" of the complaint that decision of the Attorney General to disapprove Ordinance 5154 M.C.S. was without a full and fair appraisal of all relevant information. Intervenors admit the other allegations paragraph "26" of the complaint.

27. Intervenors deny the allegations of paragraph "27" of the complaint.

28. Each of the plans enacted by the City Council of New Orleans was enacted with the purpose and effect of preventing the election of any black members of the council and preserving in office the white incumbents by diluting the votes of black voters by placing those voters in districts where they will be outnumbered by white voters.

29. In the year and one half since the 1970 census data became available, plaintiffs have persistently failed to enact a plan acceptable under the Voting Rights Act and the United States Constitution because of their desire to assure their reelection by racial gerrymandering, to prevent the election of black councilmen, and to dilute the votes of black voters. Plaintiffs have obstinately refused to enact such a plan in the further hope that this delay would precipitate a crisis which would compel the Justice Department or the courts to approve elections in 1973 under an invalid and unconstitutional redistricting plan.

30. There is now pending in the United States District Court for the Eastern District of New Orleans an action brought by intervenors to compel the enactment of a redistricting plan to be approved by that court. *Jackson* v. *Council of City of New Orleans,* No. 73-1862. On August 4, 1973, Judge Boyle appointed a special master to draw

up such a plan. Elections can and will be held under such court approved plan in an orderly and fair manner without the necessity of any intervention by this Court.

31. In view of the proceedings in *Jackson* v. *Council of City of New Orleans,* there is no need or justification for this Court to decide precipitously and without time for detailed consideration of the complex issues raised by the instant case. To do so would be to reward plaintiffs for their delay in filing the instant action, and would encourage other jurisdictions subject to the Voting Rights Act to delay, by a serious of inadequate proposals or otherwise, commencing litigation in this Court until the eleventh hour in the hope of precipitating a hurried decision allowing them to change their election laws despite the timely and carefully considered disapproval of the Department of Justice.

Respectfully submitted,

STANLEY A. HALPIN, JR.
KIDD, KATZ & HALPIN

CHARLES E. COTTON
COTTON, JONES & FAZANDE

JACK GREENBERG
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WILEY BRANTON

Attorneys for Plaintiffs

by /s/ JAMES M. NABRIT, III
James M. Nabrit, III

[Certificate of Service Omitted]

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 1
U.S. Court House
Washington, D.C.
Thursday, August 9, 1973

The above-entitled matter came on for hearing in open court at 10:00 o'clock a.m.

Before: Honorable Spottswood W. Robinson, III, USCA., Honorable Howard F. Corcoran, USDC., Honorable Joseph C. Waddy, USDC.

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[3] The Deputy Clerk: Civil Action 1495-73, Peter H. Beer, et al., versus the United States of America, et al. Mr. Stoner, Mr. Treese, Mr. Arata, and Mr. Salatich for the plaintiffs. Mr. Gorman, Mr. Shurtliff, and Mr. Friends for the defendants. Mr. Halpin, Mr. Williams and Mr. Cotton for the intervenors.

Judge Robinson: It would be helpful to the Court if at the outset counsel would identify themselves for the information of the Court and also for the benefit of the record.

Mr. Stoner: Thank you, Your Honor.

May it please the Court, my name is James R. Stoner. I am appearing here as counsel for the plaintiffs. With me is my partner, James R. Treese, who is also appearing for the plaintiffs. Also with us is the City Attorney of New Orleans, Mr. Blake G. Arata, and the Assistant City Attorney for the City of New Orleans, Mr. Ernest Salatich.

I would move at this time that Mr. Arata and Mr. Salatich be admitted as members of this bar for the purpose of this case.

Judge Robinson: That motion will be granted. Thank you very much, Mr. Stoner.

Representing the United States?

Mr. Shurtliff: May it please the Court, Carl Shurtliff. With me at counsel table is Walter Gorman who will be [4] joined shortly by Nathaniel Friends.

Judge Robinson: Thank you very much.

Representing the applicants for intervention?

Mr. Halpin: Stanley Halpin representing the movers for the defendant, the intervenor-defendants. With me is Mr. Charles Cotton and Mr. Charles Williams. I am a a member of the D.C. Bar but don't maintain an office address here. I would ask for purposes of this proceeding that Mr. Cotton and Mr. Williams be allowed to proceed for this case only.

Judge Robinson: That motion will be granted.

Judge Waddy: Do you have a local address, sir?

Mr. Halpin: We have one member, one counsel, as local counsel, Mr. Wiley Branton, who does appear on the papers and who would be responsible.

Judge Waddy: Mr. Branton is not here at the present time?

Mr. Halpin: Mr. Branton is not here right at this moment. If it would be necessary, I could have him come down.

Judge Waddy: His name does appear on the paper?

Mr. Halpin: Yes, sir.

Judge Robinson: Your motion, Mr. Halpin, for the admission of your colleagues will be held in abeyance until the Court has made a ruling on the question of whether intervention will be allowed. In the event the intervention is allowed, the motion respecting counsel will be granted.

[5] Mr. Halpin: Thank you.

Judge Robinson: Gentlemen, at the outset we would like to take up the question of intervention. The application for intervention was filed on yesterday. The Court received it this morning. We have noted that it was personally served on the original parties to the case on yesterday.

Is there any objection to the granting of that motion?

Mr. Stoner: Your Honor, it would be our position, we have no objection to the intervention for the purpose of

argument of the issues. We, however, do not know what position they would be taking with respect to the issues which have been raised in the Complaint, and we believe that the purposes of their intervention—we would have no objection to their intervention for the purpose of argument of the case to the Court. We believe that if they were to be allowed to intervene for all purposes, that is, the cross-examination of witnesses and the offering of evidence, it may unduly prolong the hearing on the case.

Judge Robinson: Let me inquire of Mr. Halpin. Is there a proposed complaint in the intervention?

Mr. Halpin: Yes, a proposed answer in intervention.

Judge Robinson: Is it attached? Oh, yes. Very well. Did you want to respond to the statement just made to the Court by Mr. Stoner?

Mr. Halpin: Yes, sir. We would like to intervene [6] not only for the purposes of argument but for all purposes in this matter, for these reasons: The individuals who we represent are the named plaintiffs also in the New Orleans case, Jackson vs. the Council of the City of New Orleans which has recently appointed a special master to draft the plan for the City Council in the event that this Court finds, as the Justice Department did, that the plan is racially discriminatory. Also, that has been accepted without objection in New Orleans as an adequate class action.

We feel that we represent interests of black people in New Orleans and are more familiar with the particular nuances and so on of this case, so that, one, it would be extremely useful to the Court and protective of our party's rights to be available to cross-examine and to examine on direct witnesses.

Further, we do have only one additional witness that we would call, and that would be Mr. Jackson. We do not intend to prolong the proceedings in any way, and I can give the Court my personal assurance that we will do nothing to delay the proceedings.

Further, I would point out that we will be proposing as a defense a legal theory which will require certain types

of questions to be put to the witness and certain types of evidence, which the Department of Justice may not—I am not sure exactly what their approach is, but it is not clear that [7] they will present that type of evidence from a live witness.

Judge Robinson: Now, the issue or issues that your clients would desire to address would differ in what way, if any, from the issues already raised——

Mr. Halpin: All right. Well——

Judge Robinson: —by the complaint and by the Government's answer?

Mr. Halpin: Well, the issue that we will raise, which I think has been raised to some extent and is of a nature in the proceedings, is that the plan of the City Council before the Court must be determined as not racially discriminatory either in purpose or effect. What we would argue is that the burden is also upon the City Council to prove that the two at large seats on the City Council are also not racially discriminatory in purpose or effect in order for them to carry their burden of proof. It is not entirely clear from the Justice Department's memorandum and so forth and pleadings in this case whether they are going to take that position and whether they are going to take it aggressively, and we would take that position aggressively. We feel that under United States versus Georgia, a voting change is a voting change, and since there has been a redistricting and a re-change, the question is directly before the Court as to whether or not the plaintiffs, that is, the City Council, can prove to the Court that these at large elections for the two seats on the City [8] Council are not racially discriminatory, and we would propose that point very aggressively.

Judge Robinson: Am I correct in my understanding that except for that, your clients would propose to address themselves only to matters that are within the existing issues?

Mr. Halpin: Yes, Your Honor.

Judge Robinson: Very well. Let me inquire of Mr. Shurtliff, what is the Government's position, because in going over the papers I was not clear either as to whether or not the issue with reference to the two at large councilmen as distinguished from those elected, the five from the districts, are in issue here.

Mr. Shurtliff: It is our position, Your Honor, that the issue of the two at large seats may be reached by this Court——

Judge Robinson: May?

Mr. Shurtliff: May be considered by this Court but that it is really not necessary to get to that issue. The issue, we believe, can be resolved on the question of whether or not the districting plan of the five district councilmen had the purpose or effect of discriminating on the basis of race, and that that issue can fairly easily be resolved and that it would not be necessary to get to the question of the impact of the two at large members.

Judge Robinson: If it turns out that you are incorrect [9] on that estimate, we would have to reach the question of the two councilmen at large; would we not?

Mr. Shurtliff: That's correct.

Judge Waddy: Mr. Stoner, what you are arguing is that you have no objection to the applicants for intervention to come in as amicus curiae, but you are opposing the intervention; aren't you?

Mr. Stoner: I guess, Your Honor, that would be the effect. Let me say at this point that we do not believe that the at large seats are at issue before the Court, for the reason that this is a charter of the City of New Orleans. It is at issue. It has been in effect since 1954.

Now, that charter specifically calls for five election districts and two at large seats. The history of the charter of New Orleans as set out in the complaint will show that there have been two elections held within the past year on the subject matter of changing the charter of the City of New Orleans. The first proposal was that the charter be changed so as to expand the council from a seven-man

body to an 11-man body with nine district councilmen and two at large.

That matter was submitted to the voters of New Orleans and was defeated by the electorates.

Following that, a proposal was made that the City Council be expanded from its present seven-man body to a nine-man body, consisting of seven district councilmen and two [10] at large councilmen. That matter was submitted to the electorate in an election held this year and was defeated.

So that the matter before the Court is the council as it presently exists; I mean by that the number of council districts, namely five councilmanic districts and two at large. That is the law of the City of New Orleans.

The electorate on two occasions has turned down a proposal that the City Council be otherwise constituted. We would submit that the question of the at large election of two councilmen is not at issue before this Court. The only issue before the Court is whether or not the five council districts as proposed in Plan No. 2 which is submitted to this Court for approval discriminates in violation of the Voting Rights Act of 1965.

Judge Waddy: Would it be appropriate, however, for the Court to consider the two at large seats on the council in connection with the overall plan for redistricting?

Mr. Stoner: Your Honor, I do not think it would, because I think in effect that the Court then would be considering —would in effect be rewriting the City Charter of the City of New Orleans.

Judge Waddy: If we are to determine the effect of the redistricting, don't we have to determine it in connection with the entire package that will result after the redistricting?

[11] Mr. Stoner: I think you do, Your Honor. I think the Court does. But I do submit that the City Council as constituted by the City Charter is the matter which must be considered by this Court, and that is the five councilmanic districts and the two at large. I do not think that

this Court can be asked by any party to rewrite the City Charter of the City of New Orleans.

Judge Robinson: I gather from the papers I have read and from what you have just said that there is nothing in the redistricting which is now before the Court that would affect in anywise boundaries or anything else that would concern the election of the two councilmen at large?

Mr. Stoner: That is correct, because the boundaries or the two councilmen at large are the city limits of the City of New Orleans, and the boundaries we are dealing with here are the boundaries of the five councilmanic districts.

Judge Robinson: The applicants for intervention, however, want to intervene not simply in an amicus curiae role but to intervene to achieve party status, not only for the purpose of litigating the issues with reference to the councilmen that are already before the Court, with the statement having been made by counsel for the applicants so as to justify what the applicants expect to seek in this litigation.

Do you have a position now with reference to the [12] motion to intervene in the true sense, not in the amicus sense?

Mr. Stoner: We have no objection to the intervention of these parties. We think all the facts should be before this Court. We do, however, differ with the intervenors on the question of the two at large. Now, as I understand the statement——

Judge Robinson: Perhaps I can save you a little effort. It seems to me that unless there is objection to the intervention—and if there is objection, of course, the Court would have to rule on it—we would permit the intervention and we would decide later just what the scope of the issues in this case might be. It is clear enough to me that the applicants at least want to participate in the litigation of issues that are framed for decision by the Court.

Now, with that in mind, is there any objection to the granting of the motion?

Mr. Stoner: I would submit, Your Honor, that it would be the plaintiffs' position that we would have no objection on that basis. But may I consult with counsel——

Judge Robinson: Certainly.

Mr. Stoner: —sitting at counsel table?

(Whereupon, plaintiffs' counsel confer.)

Mr. Stoner: The position is as I have just stated. We would have no objection.

Judge Robinson: Very well.

[13] Mr. Shurtliff, does the United States have a position on this?

Mr. Shurtliff: We would have no objection to the intervention with full rights.

Judge Robinson: Very well. The Court is now prepared to grant the motion to intervene subject to the limitation that I mentioned a bit earlier. Intervention will be granted. The scope of the issues, however, not only for the purpose of the intervenors but also for the purpose of other parties, is a matter which the Court at a later time will undertake to define.

Also, as the Court indicated earlier, the granting of this motion will be accompanied by a grant of the motion to permit the participation of Mr. Williams and Mr. Cotton as co-counsel for the intervenors in this case.

Now, gentlemen, is there anything else?

Judge Waddy: And leave to file the answer which is attached to the motion will be granted.

Is there anything else now in connection with the motion to intervene?

The next matter that the Court would like to take up is the question of just what sort of presentation counsel have in mind making. In going over the papers we understand that the plaintiffs and the defendants—and from the statement [14] made by Mr. Halpin, I gather to perhaps a more limited extent, the intervenors—all contemplate the introduction of evidence. It certainly would be helpful to the Court if you gentlemen would define for ou. edifica-

tion just what your expectations are in that particular regard, particularly with reference to the amount of time you think those presentations are going to take.

Perhaps it would be helpful if I stated that the Court has great concern stemming from the fact that it is its understanding that it is desiring to set a date sometime later this month by which candidates for office in the City of New Orleans are to qualify. Today, of course, is August 9th. We do not know as to whether indeed it will be possible to litigate this question and reach a decision by the date that counsel for the plaintiffs desire a decision of the Court. Quite obviously, this is going to be affected by the nature of the presentations the parties have in mind.

Mr. Stoner, could you tell us what the expectations of the plaintiffs are?

Mr. Stoner: Yes, sir. May it please the Court, counsel for the plaintiffs and the Government have been mindful of the length of time that could be involved in this kind of litigation, and we have agreed to stipulate to many of the facts which we think could be helpful in saving the Court's time. For instance, the large map which you see exhibited here [15] is a map that has been stipulated and shows the distribution of white and black population in the City of New Orleans as of 1970 census. Counsel for the Government and Plaintiffs have stipulated that this can be admitted for that purpose without formal proof.

Likewise, we will submit a map showing the distribution of white and black voters in the City of New Orleans by registration, and that will include figures, registration figures as of June 1973. That is just two months ago, and it has been updated by the research staff of the City of New Orleans. Likewise, that map will be stipulated by the parties as to geographically showing the distribution of black and white voters.

In addition to that, the Government has requested a number of stipulations as to some of the other plans that have been offered by other parties as to other matters that on behalf of the plaintiffs I would like to present to

the Court; that we will stipulate wherever we can to the evidence so as to save the Court some time.

Judge Robinson: Aside from stipulations, as you view the matter now, Mr. Stoner, what do you think the time requirements for the plaintiffs' presentation will be?

Mr. Stoner: Your Honor, I think for the most part we could offer all our evidence today.

Judge Waddy: We are not talking about arguments. We [16] are talking about presentation of evidence plus arguments.

Mr. Stoner: I would think that the case should be able to be tried today and tomorrow from both our standpoints.

Judge Waddy: How many live witnesses do you anticipate?

Mr. Stoner: We intend to call at least one member of the City Council and possibly two members of the City Council Planning Staff and possibly a third. So, as of the present time we would expect five witnesses.

Judge Robinson: Very well, Mr. Stoner.

Mr. Shurtliff, what are your expectations?

Mr. Shurtliff: May it please the Court, depending on how successful we are stipulating to some of the exhibits that we have proposed, we would anticipate calling four witnesses who would be rather short, we expect, and also extensive cross-examination of some of the—extensive in terms of an hour or so, I would expect, on two of the witnesses offered by the plaintiffs in the case.

I would agree with Mr. Stoner that in all likelihood the case could easily be tried today and tomorrow, especially if we were able to resolve a couple of minor disagreements on four of the prepared exhibits that we have prepared.

Judge Robinson: And if you do not make this resolution?

Mr. Shurtliff: I would anticipate it may take 20 minutes of the Court's time for us to put someone on to explain [17] the method by which those exhibits were prepared.

Judge Robinson: How long do you think it will take to resolve it? Less than 20 minutes?

Mr. Shurtliff: I would hope so.

Judge Robinson: Very well. Mr. Halpin?

Mr. Halpin: Your Honor, we would generally also be willing to stipulate where we can. We intend at this time to call only one witness. But since we are in a defendant's position, of course, if we see that it is necessary for rebuttal testimony, other witnesses might be appropriate. But my anticipation at this time is a single short witness.

Judge Robinson: And your estimation of the amount of time it will take for that, sir?

Mr. Halpin: I would say 20 minutes to half an hour for examination and cross-examination.

Judge Robinson: Very well. So much for the evidentiary presentations.

Gentlemen, how about other needs in connection with this case, legal argument and that sort of thing? I recognize that it may be somewhat difficult to make estimates at this time, until the evidence has been presented.

The Court, in an effort to facilitate this litigation as much as possible, did call on counsel for some preliminary statements of legal positions prior to its sitting today. After the evidence has been taken and the case has been sub- [18] mitted to the Court, the needs for presentation of written argument, perhaps also all argument, may obviously be quite different.

What are your feelings in that regard, Mr. Stoner?

Mr. Stoner: Your Honor, with that accepted position of the Court, I would think that closing argument, a half to three-quarters of an hour, possibly an hour in closing argument, depending on the extent of the evidence.

Judge Robinson: Do you expect to file any sort of legal brief in this case?

Mr. Stoner: As of this moment, we would not. But it may develop as the testimony comes in that, yes, we would.

Judge Robinson: Very well. Mr. Shurtliff,

Mr. Shurtliff: Your Honor, I would think that most of the evidence will be in the form of maps, statistics, matters of that sort, testimony of witnesses. I really don't

believe that oral argument would need be very extensive, if at all necessary.

Judge Robinson: How about written briefs?

Mr. Shurtliff: I would think, if the Court please, that a written brief might well be the best way to set out the positions of the parties.

Judge Robinson: And your estimate of time demands in that respect?

Mr. Shurtliff: I really couldn't estimate. We could [19] do it rather rapidly as we did at your request for the pretrial memorandum. Of course, it would take more effort, but hopefully it will not take much longer if the Court directs.

Judge Robinson: Mr. Halpin?

Mr. Halpin: I expect that our oral argument will be brief, and assuming that the other issues are covered by the Department, will be specifically directed to the question of the two at large districts. I anticipate at this time that I will be able on that oral argument to cover our legal arguments in that respect without the necessity of a written brief. But should we file a written brief, we can certainly file it within any time allowed for the Department to file theirs.

Judge Robinson: Very well, gentlemen. This is a very important case. Speaking simply for myself and irrespective of the present plans of counsel, I may in all probability request counsel to file written briefs. The importance of the litigation, the apparent complexities of the case, to say nothing of the unexpected which cannot be gauged at this present time, would all seem to indicate that written submissions of that character may very well be in order. I do not know whether my colleagues want to express themselves on that or not.

(Whereupon, the Court confers.)

Judge Robinson: Our present feeling, gentlemen, is that we will be sensitive to a need for briefs and also proposed findings of fact and conclusions of law from you gentlemen.

[20] I announce that at this time for whatever bearing it may have on the question of timing, that we have under consideration.

I would like to address this question to all parties. Quite obviously, with this litigation being filed on July 25th and the matter having been set for hearing today, there has been no opportunity for depositions or interrogations or any other discovery process up to the present time.

Do counsel feel that if an opportunity of that sort were available it would facilitate the presentations not only from the Court's viewpoint but also from counsel's viewpoint?

Mr. Stoner?

Mr. Stoner: Your Honor, I might represent to the Court that by stipulation of parties, depositions of the three members of the Council Research Staff were taken in New Orleans last Friday——

Judge Robinson: Is that right?

Mr. Stoner: —upon notice that the case was set down for hearing. We stipulated, and my partner, Mr. Treese and I, and Mr. Shurtliff, went to New Orleans last week and started to prepare our case, and depositions were taken. I don't believe that any further pre-trial would be necessary from your standpoint.

Judge Robinson: Are the depositions transcribed? Are they available now?

Mr. Stoner: They sir, Your Honor. Yes, they are.

[21] Judge Robinson: And the witnesses deposed, Mr. Stoner, again were whom?

Mr. Stoner: There were three members of the Council Research Staff, the Director and two of his assistants.

Judge Robinson: That is a group, as I understand, that did the planning with reference to the redistricting that is now before the Court?

Mr. Stoner: That's right. They did the statistical work and the preparation of several plans and several alternative plans. They are all three here in the courtroom, and we will offer them as witnesses. But their depositions have

been taken and the Government does know the extent of their knowledge and testimony.

Judge Waddy: Do you plan to have live witnesses to explain the various maps and diagrams that you say you have here in addition to the five that you have mentioned?

Mr. Stoner: No, I think these five would be used for that purpose.

Judge Waddy: They would be used for that purpose?

Mr. Stoner: Yes, sir, Your Honor.

Judge Robinson: Very well, Mr. Shurtliff.

Mr. Shurtliff: Depositions were taken and they are transcribed. However, they were taken for the purposes of discovery. We did not get into the question with those three witnesses whether or not they could be introduced for evidentiary [22] purposes. It is my judgment that if we could introduce those exhibits—the depositions taken of the three Research Staff members—that it would limit therefore the necessity for in-depth examination when they do appear, and it would be time-saving in that respect.

Judge Robinson: The depositions were taken at whose instance?

Mr. Shurtliff: The Government's, Your Honor. I would think if we could get some of the information in through the depositions, it would not be necessary for us to set out the methods in particular as to how the plans were arrived at. There is quite a bit of background material that sets the stage, but——

Judge Robinson: Have you discussed this aspect of the matter of this possibility with other counsel?

Mr. Shurtliff: We have not, Your Honor. One other matter. On the time element and so forth, we have proposed four exhibits which we have discussed briefly with counsel for the plaintiffs, and they have some reservations about stipulating to their use at this time. If it became necessary for us to put on supporting testimony or to add to those exhibits, it would take us some time in those respects. We believe that it would have us considerable

effort if we can arrive at a stipulation as to the those four exhibits.

Judge Robinson: Now, how soon could you let us know [23] in that regard?

Mr. Shurtliff: As to whether or not——

Judge Robinson: As to whether a stipulation can be reached.

Judge Waddy: In other words, if we took a brief recess, could counsel get together within a reasonable time here and advise the Court fully as to what they have stipulated to?

Mr. Stoner: May I be heard on this, Your Honors?

Judge Waddy: Yes.

Mr. Stoner: Counsel for the Government has requested that 22 exhibits be stipulated to. Now, we have agreed to stipulate to all of these except four. The four that we have not agreed to, we don't feel, are really competent evidence.

For example, one is a portion of an ad that appeared in one of the New Orleans' newspapers. It was an ad that was placed there by the City of New Orleans announcing the election, but it does not include the whole ad. It only includes a portion of the ad. We think the Court should have the entire ad to really assess the import.

Judge Waddy: Do you have the balance of it?

Mr. Stoner: We do not, Your Honor; we do not. Now, we objected to the admission of part of the ad. We say the whole ad should be admitted.

Then there is also a letter from one of the councilmen [24] who voted against this plan. Incidentally, the plan before the Court as set out in the complaint was a six to one vote. There is a letter by one of the councilmen which we don't think is appropriate. I understand that the councilman is here in the City of Washington, and any evidence that he should have to present, we think he should do it live.

In addressing ourselves to the question of the use of the depositions for other than discovery purposes, we

think it is unfair to the Court when the witnesses are here to use those depositions for evidentiary purposes. In other words, we have brought those witnesses here so that the Court can see them in person and assess the testimony which we will adduce. We believe it is unfair to the Court to rule on this issue without seeing the witnesses who will be giving substantially statistical facts to the Court.

Judge Robinson: I think that probably the Court may be of some assistance to counsel, if you will indulge me.

(Whereupon, the Court confers.)

Judge Robinson: Gentlemen, we are going to take a recess to enable counsel to see whether they can finalize the possibilities of stipulations and other procedures that may have a tendency to shorten this presentation. I want to impress on counsel that the only reason for suggesting that counsel do that so as to shorten this matter is not only the reason that ordinarily contributes to judicial economy but also because we [25] simply have this dreadful time problem that I mentioned before. The Court has tried to cooperate as far as it can and, of course, it will expect counsel to do the same thing.

Now, before we take this recess, I would like to ask Mr. Stoner just a couple of questions, and I am asking these only out of an abundance of precaution.

If the case were ready for submission to the Court now, I would have no idea as to whether the Court could get its decision out in time to enable the setting of a qualification date later this month or indeed anytime soon.

What will be the consequence to the people of New Orleans if delay in that regard is unavoidable? I would like you also to tell me just how this matter has been handled since the point—when was it? In 1971—when the City Council first began to work on the matter of redistricting with respect to elections other than the referendums that were had in two instances? In other words, have there been instances where the problem of elections in New Or-

leans of some kind or another have had to be handled? If so, how were they handled, Mr. Stoner?

Mr. Stoner: May it please the Court, I understand that the present law—maybe Mr. Arata or Mr. Salatich can help me—but I understand that the present law requires the setting of a time late in August of 1973 for qualification for the November election. Now——

[26] Judge Robinson: Oh, in August you simply set another time instead of setting a time which is the time for qualification in August?

Mr. Stoner: No, no. The time is set in August, in the latter part of August, 1973, for qualification. Now, this would require notice to the electorate as to the last date for qualifying for the primary election.

Judge Robinson: And the latest possible date in that regard would be what?

Mr. Stoner: If the Court will indulge me one second.

Mr. Salatich, can you answer that question?

Mr. Salatich: It would be approximately sometime in the latter days of January, Your Honor. There is a latitude in there, a few days.

Mr. Stoner. Of August.

Mr. Salatich: August.

Judge Waddy: Give us the earliest date and the latest date.

Mr. Salatich: If my memory serves me correctly, it would be about September 1st, August 26th; somewhere in that interval. August 27th to September 1st. About a three-day interval in that connection.

Mr. Halpin: If I might——

Judge Robinson: Just a moment. We will indulge you in just a bit.

[27] All right. Now, what happens if we can't make that date?

Mr. Stoner: I believe that—if the Court will indulge me.

(Whereupon, Mr. Stoner and Mr. Salatich confer.)

Mr. Stoner: I am informed, Your Honors, that the Court could set other dates for the qualification but——

Judge Robinson: Which Court?

Mr. Stoner:—the November election——

Judge Robinson: Which Court?

Mr. Stoner: Presumably this Court, Your Honor, in view of the pendency of this matter. The present status of the matter is that an election cannot be held now unless this Court approves this plan.

Judge Robinson: Has there been any elections other than the two referendums since the matter of redistricting was embarked upon by the Council?

Mr. Stoner: Yes, I believe there was a national election that was held last November and——

Judge Robinson: Was it affected by the problem that is presented by this litigation?

Mr. Stoner: It was not, Your Honor. This is redistricted to the local elections in the City of New Orleans.

Judge Robinson: In other words, unless the election concerns voting to put in office five members of the Council [28] from the five electoral districts in New Orleans, you do not have this problem; is that the answer to it?

Mr. Stoner: That's correct, that's correct. It is redistricted just to the five councilmanic districts. Well, really I guess it is the five councilmanic districts and the two at large of the City of New Orleans. So, it is merely a local issue.

Judge Waddy: Is the November date set by ordinance or statute or has that been an ad hoc date?

Mr. Stoner: No, that's been set by the statute of the State of Louisiana.

Judge Waddy: And if you could not proceed with that election in November, when would the next one be? Next November or when?

Mr. Stoner: Well, I am sure there is machinery for the establishment of——

Judge Waddy: For a special election?

Mr. Stoner: For a special election.

May we consult just one moment?

Judge Robinson: Well, why don't we afford counsel this opportunity in the recess that I mentioned before. I know that you gentlemen are as aware as we are that the need to postpone elections, sometimes even to enjoin elections, has appeared in some of the litigation with reference to Section 5 problems. The purpose of this explanation, of course, was to [29] size up the problem in this case.

Gentlemen, how much time do you think you would need to accomplish these several purposes?

Mr. Stoner: Minutes.

Judge Robinson: How long a recess do we need to take?

Mr. Halpin, I must apologize. I said a few minutes ago that the Court would recognize you in due course. Can this be held until after?

Mr. Halpin: I simply wanted to say for the Court's benefit that my knowledge on this is that the District Court in New Orleans has considered this problem also relative to moving the qualification date back. When the Louisiana legislature was redistricted by a special master appointed by the Federal Court recently, the qualifying date had been moved back in that instance, and I think there would be no problem to either this Court or that Court moving the qualification date without disturbing the election.

Judge Robinson: Gentlemen, we will take a recess. Since it isn't quite certain as to just what amount of time you gentlemen will need, suppose we take a recess until further order of the Court. When you gentlemen have exhausted the possibilities of stipulating and the possibilities of anything else that may facilitate the presentation of your respective positions in this case, would you notify the Marshal, and as promptly thereafter as may be possible the Court will then [30] reconvene.

With that the Court will stand in recess until further order.

(Whereupon, the Court then, at 10:55 o'clock a.m., stood in recess until 11:30 o'clock a.m., at which time it reconvened.)

(During the recess, the following exhibits were marked for identification: Plaintiff's Exhibits 1, 2 and 3; Defendant's Exhibits 1 through 16, 18, and 21 through 24.)

Judge Robinson: Very well. Is there anything further that you would want to report to the Court on the events occurring during recess?

Mr. Stoner: I can report to the Court that we have discussed the request for various stipulations and we will be able to deal with them. I believe we have made some headway and we have to resolve some misunderstanding between counsel, and we have made some headway that should have the effect of shortening the offer of the evidence.

Judge Robinson: And during the course of this trial there, of course, will be continuing opportunity for counsel to cooperate in this regard.

Mr. Stoner: Yes.

Judge Robinson: Thank you very much, Mr. Stoner.

Do other counsel wish to report anything to the Court [31] at this time?

Mr. Halpin?

Mr. Halpin: I would like to respond briefly to what Mr. Stoner had indicated relative to the Court's power and so forth and state our position on that.

I think it is beyond question that the Court does have power to enjoin the elections. A similar court did so in the City of Petersburg, and there is no question that that could be done. Our interest——

Judge Robinson: Well, in Petersburg and in other cases too.

Mr. Halpin: Yes, sir, in any number of cases. I can cite the Court to a number of District Court decisions in Louisiana which have done that also.

As a practical matter, what we would like to point out to the Court is that in Louisiana the incumbents, of course, are all white. Many of the black candidates will be running for the City Council perhaps for the first time with the

realistic chance of being able to win. We are very opposed to having a short period of campaigning. We think if the Court is going to consider delaying part of the election process, they should delay all of it. That is, there is no reason why the Court couldn't allow the other municipal elections to go under way at the regularly scheduled time and move back not only the qualifying period but also the elections for City Councilmen, so that [32] the class that we represent will have an equal opportunity to present their campaign to the voters as do the incumbents who are well-known by virtue of their incumbency.

Judge Robinson: Gentlemen, thank you very much. As I think is well attested to by what has happened up to the present time, the Court is expending every effort to accommodate the exigencies of time associated with the New Orleans situation. The matter was raised with counsel this morning because, quite obviously, the question is just how much maybe possible, and we felt some enlightenment might be helpful to us at this time. We will continue to do everything that we can to expedite the resolution of this litigation.

If it becomes apparent to the Court that it cannot be done by the end of this month—and the possibility of that, of course, is quite great—in all probability we will be discussing details with counsel again at a later time.

I will also say for the information of counsel and the parties that during the recess period we succeeded in clearing out today and tomorrow for the purposes of the evidentiary presentations based upon the estimate of counsel that it could be done within this space of time. It is the hope of the Court that it can be done within this space of time, because the members of the Court have dreadful problems if it becomes necessary to extend this trial beyond tomorrow.

We will proceed then with the taking of evidence, unless [33] there is some other preliminary matter.

Do counsel desire the rule on witnesses?

Mr. Stoner: We do not.

Mr. Shurtliff: We do not, Your Honor.

Judge Robinson: Mr. Halpin?

Mr. Halpin: No.

Judge Robinson: Do you desire to make opening statements? We are fairly familiar with the case and so far as the Court is concerned, they may be dispensed with unless you gentlemen want to make them.

Mr. Stoner: Your Honor, I would prefer a short opening statement.

Judge Robinson: Very well. All right, Mr. Stoner, you may proceed.

Mr. Stoner: I will assure the Court I will keep it as short as possible.

Opening Statement by Mr. Stoner.

Mr. Stoner: The case before the Court is an action brought under Section 5 of the Voting Rights Act of 1965 as it is commonly referred to. In this case the Council of the City of New Orleans, acting for and on behalf of the City of New Orleans, has brought an action to declare the second plan which it has adopted of redistricting a valid plan for the redistricting of the City of New Orleans for purposes of the election of the Council of the City of New Orleans.

[34] We have present with us in the courtroom five of the six plaintiffs, all of whom are members of the City Council, and I should like to just briefly introduce them to the Court at this time. Mr. Peter H. Beer, Mr. Philip Ciaccio, Mr. Joseph DiRosa, Mr. John Lambert, and Mr. James A. Moreau.

I might say that Mr. DiRosa and Mr. Moreau are the two councilmen who have been elected at large. The other three persons are representatives of districts in the City of New Orleans.

Under the Charter of the City of New Orleans, it is mandatory that the City Council redistrict itself every 10

years. This is a Charter provision that was adopted in 1954 and has been in existence since. It requires the City Council to redistrict itself following each decennial census of the United States Census Bureau.

Judge Robinson: The Charter itself is a creature of the citizens of New Orleans, or does the legislature or any other political subdivision of the State of Louisiana play a part in that? Somehow I though—I understood that this was a Charter framed by the citizens of New Orleans for the citizens of New Orleans. Do I have the right impression?

Mr. Arata: That's right, but it is also protected by our constitution.

Judge Robinson: Legislative approval or executive approval is not necessary to any amendments of the Charter? [35] Mr. Arata: For any amendment of the Charter we need a vote of all the people.

Judge Robinson: But you do not have to go beyond the citizenry of the City of New Orleans?

Mr. Arata: That's correct.

Judge Robinson: Very well. Thank you.

Mr. Stoner: Now, the Charter itself, to state again, makes it mandatory that the Council redistrict itself every 10 years. This is founded in purpose, namely, that as population changes occur in the City, the districts should be drawn so as to reflect the changes in population trends in the various districts of the City.

Following the submission of the 1970 census information, the City Council adopted a plan to redistrict the City. There was a great political feeling in the City that the size of the City Council should be increased. So, the City Council adopted a proposal to increase the number of representatives on the City Council. I shall not go through all the details but will point out to the Court's attention that the first proposal that was submitted to the voters called for the increase of the size of the City Council from its seven-man membership to 11. This was submitted to the voters and an election was held on November 7, 1972, and that proposal was defeated by the electorate.

Following that, another proposal to increase the size [36] of the City Council was adopted by the City Council and submitted to the electorate. A special election was held on March 20, 1973, at which time that proposal was presented to the voters. This proposal called for an increase of the City Council from its present seven members to a nine-member council. Again the electorate defeated this proposal.

So, the issue before this Court is the redistricting of a seven-member City Council as provided in the Charter of the City and as affirmed—apparently as affirmed by the voters in two elections since the 1970 decennial census information has become available.

Of the seven members of the Council, two run at large; five run in districts. The districting of those five districts is the issue which this Court must address.

Now, I have displayed here several maps. The large map—and I might say to the Court that these maps, it has been agreed between counsel that they will be stipulated as being accurate and may be admitted into evidence, and I will offer them in evidence at a later time.

But the large map portrays the City of New Orleans and portrays the distribution of the white and the black population. Each orange dot represents 100 black population.

The information from which this map has been prepared is based on the 1970 decennial population information.

Now, I should like to point out on this map several [37] geographic peculiarities of the City of New Orleans so that all of us might become familiar with the geography and some of the natural boundaries.

I will point out first the line between Jefferson Parish and Orleans Parish. This is a line separating the City of New Orleans from Jefferson Parish. So, we are involved only with the area to the right of that line.

We have here the natural geographic boundary, the Mississippi River, which you will note curves quite markedly through the City and goes on. We have here the

natural boundary of Lake Pontchartrain in the boundary, which follows this line and goes on. I understand that this airport which you see portrayed here is in fact built out into the lake, and the natural boundary of the lake is on the lower side of the airport as portrayed there.

Now, in addition to this, the map does not show the entire City because there is a leg of land that extends out here along Lake Pontchartrain and along the intercoastal waterway, which is a body of water, and I believe the line of that is roughly this. There is a leg of land that extends out some distance between Lake Pontchartrain and the intercoastal waterway. I am informed that this is a very sparsely populated area. I mean by that the extended portion of the City, the leg of the City is sparsely populated, and indeed, as you can see from the map itself, even the center part of this area is [38] very sparsely populated. This area of the City is known as New Orleans East or East New Orleans, and I mean by that this City here.

This area of the City here which borders the lake is known as the Lake area.

There is another very important geographic distinction that I would like to call to the Court's attention, and that is the area which is across the river, across the Mississippi River from the downtown area of the City of New Orleans. It is a part of the City and it is known as Algiers. This area here across the Mississippi River from this area extends along the river and is part of the City of New Orleans.

This again here is the line dividing Orleans Parish from St. Bernard Parish, so that the City line is this black line. This is the Mississippi River. This is the area of Algiers, which is part of the City of New Orleans that is across the river from the rest of the City.

Judge Robinson: Would you mind pointing out where the one bridge between Algiers and downtown New Orleans is?

Mr. Stoner: Yes, Your Honor. The bridge, I am informed, is about in this area, approximately here. It is on sort of the edge of Algiers.

Judge Robinson: I gather that that is not the only bridge but it is the only bridge between Algiers and downtown; is that correct?

[39] Mr. Stoner: You are right, Your Honor. In fact, it is the only bridge in the City of New Orleans. There is a bridge——

Judge Robinson: There is no other bridge between Algiers and New Orleans, only the one bridge?

Mr. Stoner: And the main downtown City? Yes, Your Honor, that's right.

Judge Robinson: No, no, not downtown. Any other place in New Orleans?

Mr. Stoner: Between Algiers and——

Judge Robinson: Any part of New Orleans.

Mr. Stoner: There is only one bridge.

Judge Robinson: Thank you.

Mr. Stoner: There is only one bridge. There is a bridge across the Mississippi considerably up river in Jefferson Parish, but the only bridge between Algiers and the rest of New Orleans is about here. It is one bridge and one bridge only.

Judge Robinson: Now, Algiers at the present time, that is, under the plan under consideration, is now part of the Third District; right?

Mr. Stoner: Under the plan as submitted, and I might——

Judge Robinson: District C, as I recall.

Mr. Stoner: I might refer to this map——

[40] Judge Robinson: Yes, I see.

Mr. Stoner: —which is Exhibit H to the Complaint. Under that plan, the Algiers area is in District C, and is included in the district directly across the river from it.

Judge Robinson: Is that one district also, in District C?

Mr. Stoner: The one bridge?

Judge Robinson: The one bridge.

Mr. Stoner: It is very close to the line, I believe, yes. I see the gentlemen nodding their head. I believe the bridge is very close to the line between Algiers and District C.

There is also a ferry, I understand, approximately in the same position as the bridge that commonly runs between Algiers and this area of the City.

It might be more descriptive on this map to say the other bridge is considerably up river from the bridge which presently exists here to Algiers.

Now, as I said, having oriented ourselves geographically, I would like to point out the natural boundaries of the City again, namely, the Lake, the Mississippi River itself, the intercoastal waterway here, the leg of the City extending out there know as East New Orleans, and Algiers which is in this area.

The evidence will show that Algiers is a growing area and that there has been great controversy and great pressure for [41] another bridge across the river.

I would like at this time to interject and say that the present plan of districting in the City of New Orleans, that is, the plan that has been in existence since 1961, includes Algiers as part of District A, which is this district here, and there has been a great controversy between, the evidence will show, the population of Algiers and the population of District A as to the location of a bridge. In fact, this matter has not been resolved through years of controversy.

As I stated earlier, this map portrays the distribution of the black and the white population of the City of New Orleans, the orange being the black and the green representing white voters, each dot representing 100 population in each case. You will note that the black population is scattered throughout the City and, indeed, in many respects it would appear that the City is an integrated city. There is black population in East New Orleans, along Lake Pontchartrain Park Area, in these areas. I believe that's Ward 7. There is black population out here in 17 interspersed with considerable white population. There is a concentration of black population in this area, which I believe on this exhibit portrays itself as proposed council District B.

There is also considerable black population in this area of the City and in this area and across, indeed, in Algiers there is considerable black population.

[42] So that the population of the City is not concentrated in a core area or in a, if I may use the phrase, ghetto area, but rather is it spread out throughout many areas of the City and indeed practically every area of the City, with the possible exception of this leg of land between the City Park and Lake Pontchartrain here; that doesn't appear to have any black population. But otherwise, the black population is indeed spread throughout the City.

Now, I would call to the Court's attention what has been marked as Plaintiffs' Exhibit 3, which is an exhibit too to the Complaint. It is Exhibit H. I believe that the Court has copies of this exhibit.

This is a map of the City which portrays the plan that is before the Court for consideration, and you will see the five councilmanic districts, the City divided into five councilmanic districts: District A, District B, District C, which is on both sides of the City Park and runs to the lake and extends over to include the entire Algiers area.

You will see District D as being an area here where I am pointing to, and District E including all of East New Orleans and portrayed on this map apparently in this area.

These are the five councilmanic districts that the City Charter calls for as portrayed by the present plan which is before the Court for consideration.

Now, the evidence will show that prior plans that had [43] been submitted, prior public controversy, prior public debate had centered around Algiers. The people of Algiers felt that they had a common interest with one another and therefore should, as a group, be located, be blocked in one councilmanic district. The first plan which had been approved had cut Algiers into three districts, and there was great objection to the cutting of that area of the City into three councilmanic districts.

There had been also proposed plans, I believe, that would cut Algiers in two, but the City Council felt that this being

an overriding issue, namely, the bridge issue, the transportation issue, and the transportation from Algiers to the rest of the City being a vital issue, it was important that Algiers as a body, the people of Algiers as a body should be included in one councilmanic district rather than split among other councilmanic districts.

Now, the other map, which is underneath—I will ask the Court's indulgence just a moment here—is a map that has been stipulated to by the parties, and it has been prepared from current voter registration lists as of June of 1973. In other words, the information on this map is only two months old. It is current information.

In this map each brown dot represe s 50 black registered voters. Each green dot represents 50 white registered voters.

[44] I would call to the Court's attention again the dispersal of the voters throughout the City of New Orleans into the various councilmanic districts as proposed in the plan. Again, we do not have a case of the voters all being bunched but rather geographically the registered voters, just as in the population case, are extended throughout the City.

I believe the evidence will also show that among the black population there is a large percentage of young people, and I mean by that people under 18 years of age. This would tend to explain what might appear to be a little disparagy between the population map and the voter registration map. So that while this map represents population, many of the people included in these figures would be under 18 years of age and thus not eligible to vote.

On the other hand, this map represents those who are 18 years of age and in fact have registered to vote.

Now, the request of this City Council is this: After three years following the '70 decennial census—I belive the evidence will show the information regarding the decennial census was made available about August or September, the first information, of 1970. So, for three years this City has not redistricted itself as required by the City Charter.

The Council of the City is charged with the responsibility of redistricting the City.

The evidence will show that with respect to the [45] various plans, public hearings were held both in the daytime and at night, at which time parties had an opportunity to come forward and to present their views as to the districting of the City. The City Council has adopted the plan which is represented on this map and which has been attached to the Complaint. It believes that this is a fair and equitable plan and complies 100 per cent with Section 5 of the Voting Rights Act of 1965.

We submit that this is a plan that should be approved by this Court as being a viable plan.

I would call the Court's attention to the fact that we are dealing with a plan which really will be only used for a period of seven years because in 1980, by the Charter of the City of New Orleans, again the City Council as it then exists will be required to redistrict itself. So, we are dealing here with a plan which will in fact, looking into the future, be used for the 1974 election. Incidentally, the election will be held in March of '74 for these councilmanic districts. So, we are dealing here with a plan that will be used in 1974 and again in 1978, and prior to the 1982 election the City Council, by its Charter, will be required to redistrict itself to then reflect changes in the pollution that occurred during the next seven years.

So, the plan that being submitted here and which the Court is being to approve is a plan that will be used [46] for two elections, and in 1982 the City will be required to redistrict itself again.

The evidence will show that this is a fair and equitable plan to the voters of New Orleans and does not deprive anyone of his right to vote or dilute his vote by reason of color or creed.

Judge Robinson: Very well, Mr. Stoner.

Mr. Shurtliff, would the Government desire to make an opening statement at this time?

Mr. Shurtliff: Not at this time, Your Honor.

Judge Robinson: Very well.

Mr. Halpin?

Mr. Halpin: Mr. Cotton will make an opening statement, Your Honor.

Mr. Cotton: I would like at this time to make an opening statement.

Judge Robinson: Very well, Mr. Cotton.

Mr. Cotton: As previously claimed, Your Honor, we represent a class of black persons, black people in Louisiana, which comprises 46 per cent of the black population.

As the evidence will show, there has never been a black person on the City Council. In fact, the present City Council is all white.

The evidence will further show that because of the racial complexion of the City Council, black people have [47] suffered tremendously in the amount of city service, municipal service.

The evidence will further show that the two at large seats which we as defendant intervenors—is in fact a quota for white candidates. The evidence will show that it is very difficult for a black person to legitimately run for these two at large seats and to publicly claim a black constituency and at the same time successfully prevail in an election in the City of New Orleans.

I would like to at this point pay deference to counsel and show that in the City of New Orleans there is in fact pockets of black persons along the river, in this area (indicating).

The evidence will further show that the present incumbent city councilmen all live in close proximity to each other, and the first plan and the second plan were guaranteed that they would retain their positions on the City Council.

We intend to prove that throughout the history of electoral politics in the City of New Orleans, racism has always been a predominating factor up until this point. We intend to prove that because of the discrimination in voting in electoral politics in the City of New Orleans, that there is

a residual effect upon the black voting population in the City of New Orleans, so much so that unless this Court takes into account the two at large seats, it will be at least a decade or better [48] before a black person can legitimately and successfully compete for those positions.

We intend to show that the present City Council drafted two plans; that there was adequate time to come up with a plan suitable to meet the guidelines of the Voters Rights Act, and that the present City Council, for reasons and purposes which will later come out in the evidence, did two things: They guaranteed themselves re-election and at the same time purposely, purposely came out with a plan that had the effect of diluting the black vote.

We intend to show that unless seven single member districts are included within the reapportionment plan, black people in the City of New Orleans will at best be confined to five positions and, if the present plan is adopted, only one position, which is questionable.

We intend to show finally that this Court does have the equitable powers to, one, enjoin the elections, and to come up with a plan that is equitable for all parties, both black and white, in City of New Orleans.

Again I say, we represent 46 per cent of the black populace in the City of New Orleans. Black people have been denied legitimate entrance into electoral politics in the City Government in the City of New Orleans. We will show, unless this Court takes significant action, that that trend will continue for the next decade.

[49] Judge Waddy: Do I understand you to say that this Court must come up with a plan for the redistricting?

Mr. Cotton: No. Your Honor. I said that unless this Court takes some action——

Judge Waddy: I thought you said a few minutes ago that this Court had to come up with a plan.

Mr. Cotton: If I did, Your Honor——

Judge Waddy: I was wondering, what was your authority for that.

Mr. Cotton: If I did, Your Honor, I was in error.

Judge Waddy: All right.

Mr. Cotton: Unless this Court takes some action with regard to the plan under consideration, black persons will suffer in the City of New Orleans for the next decade.

Judge Robinson: Very well, Mr. Cotton.

Mr. Stoner, you may proceed with the evidence.

Mr. Stoner: I would like to call as the first witness of the plaintiffs, Councilman Beer of the City of New Orleans.

May it please the Court, the Plaintiff would like to request the rule on witnesses, if we might. I previously said that it would not be necessary, but we have been asked to change that. We will change that.

Judge Robinson: Very well. All witnesses in the case——

Marshal, can you accommodate the witnesses?

[50] The Marshal: Yes, sir.

Judge Robinson: Will you do so before administering the oath.

The Marshal: Yes, sir.

The Deputy Clerk: All witnesses who expect to testify in this case, please follow the marshal to the witness room until called; all witnesses on both sides.

Mr. Shurtliff: May it please the Court,——

Judge Robinson: Mr. Shurtliff.

Mr. Shurtliff: We have a young man who has prepared many of the exhibits for us purely in a technical sense. He is not a resident of New Orleans and not interested in the matter at all. It might be necessary for him to testify. But in the meantime, he would be helpful to us in keeping up with the exhibits.

Judge Robinson: Would you identify him for the record?

Mr. Shurtliff: Mr. Tolmach.

Judge Robinson: And your request is that he be permitted to remain in the courtroom?

Mr. Shurtliff: That's correct.

Judge Robinson: Is there objection?

Mr. Stoner: We have no objection to that.

Mr. Halpin: Your Honor, the only witness that we intended to call was Mr. Johnny Jackson, who is the plaintiff, [51] and——

Judge Robinson: He is a party.

Mr. Halpin: Who is a party, and we would like——

Judge Robinson: He may remain. All right, gentlemen.

Mr. Stoner: No objection.

Judge Robinson: All right. The clerk may administer the oath.

Whereupon,

Peter H. Beer,

one of the plaintiffs herein, was called as a witness in his own behalf, and, having been first duly sworn, was examined and testified as follows:

Mr. Stoner: May it please the Court, before questioning Mr. Beer, I would like to move at this time the admission into evidence of all the exhibits that have been attached to the Complaint. This is done in view of the stipulation that has been entered by the parties. I would also move that the population map which I have referred to in my opening statement and also the voter registration map which I have referred to in my opening statement be admitted in evidence. This too is done with the stipulation of counsel.

Judge Robinson: Very well. Those exhibits will be received. However, Mr. Stoner, I think it would be helpful for purposes of the transcript if you identify each of these exhibits you refer to. You have referred to three maps. You have [52] referred to exhibits attached to the Complaint.

Judge Waddy: They should be marked.

Judge Robinson: Let's have them marked and give them numbers which will be points of reference for the remainder of this trial. Is that agreeable?

Mr. Stoner: Yes.

Judge Robinson: All right. Which one do you want? Do you have any particular order that you want?

Mr. Stoner: I have none. I would have started with Number 1, Exhibit A to the Complaint and go through those and then pick these up. I believe numbers have already been put on these three exhibits.

Judge Waddy: Mrs. Kelly, do you have marks on those?

The Deputy Clerk: Yes, sir, Plaintiffs' No. 1 and No. 2 and No. 3.

Judge Waddy: Now, there are other documents that you are now offering in evidence besides these three?

Mr. Stoner: Yes. The other documents will be Exhibits A through, I believe it is, G, that are attached to the Complaint. This Exhibit 3 is Exhibit H to the Complaint.

Judge Robinson: You simply want the numbers to follow consecutively with reference to all exhibits attached to the Complaint, except what now appears as Exhibit No 3, I take it, is the small map?

Mr. Stoner: No. 3.

[53] Judge Waddy: Let Mr. Stoner find in the Complaint those that he wants marked.

Mr. Stoner: For the record, Exhibit 1 will be the population map.

Judge Robinson: The large map.

Mr. Stoner: The large population may showing the distribution of population in the City of New Orleans between black and white.

Exhibit 2 will be the voter registration map which shows the distribution of registered voters geographically in the City.

Judge Robinson: That's the second largest map.

Mr. Stoner: The second largest map.

Judge Robinson: Very well.

Mr. Stoner: And Exhibit 3 will be the present plan of redistricting, which is a map, and which had been originally attached as Exhibit H to the Complaint.

Judge Robinson: Very well. I am all straight now.

Mr. Stoner: Exhibit 4 will be Exhibit A to the Complaint.

Judge Robinson: That's the Charter?

Mr. Stoner: The excerpt from the Charter of the City of New Orleans. Exhibit 5 will be Exhibit B attached to the Complaint.

Judge Robinson: These are the excerpts from the 1912 [54] Louisiana Act, as I recall?

Mr. Stoner: From the 1912 Act, yes, Your Honor.

Judge Robinson: All right.

Mr. Stoner: Exhibit 6 will be the Exhibit C to the original Complaint, which is a map of the first plan of redistricting as adopted by the City Council. Exhibit 7 is Exhibit A to the original Complaint.

Judge Robinson: Exhibit A or D?

Mr. Stoner: I'm sorry, Exhibit D, and is a Mayor-Council Series Ordinance No. 7496.

Judge Waddy: That is the plan that you are now espousing; is it not?

Mr. Stoner: No, no, it is not. That was the first plan.

Judge Robinson: The first plan?

Mr. Stoner: That was the first plan.

Judge Robinson: Does that have written on it, Mr. Stoner, "Calendar No. 5194"?

Mr. Stoner: It does.

Judge Robinson: Very well.

Mr. Stoner: Yes, it does. Exhibit 8, Plaintiffs' Exhibit 8 would be Exhibit E to the original Complaint and is the Department of Justice's letter dated January 15, 1973, with respect to the first plan, addressed to Mr. Ernest L. Salatich.

Exhibit 9 would be exhibit F to the original Complaint [55] and is an ordinance, Mayor-Council Series Ordinance No. 5154, and is the present plan, the second plan, which is before the Court.

Exhibit 10 would be Exhibit G to the original Complaint and is the Department of Justice's letter dated July 9, 1973, with respect to the second plan and is addressed to Mr. Ernest L. Salatich.

A letter from J. Stanley Pottinger, Assistant Attorney General, Exhibit H to the Complaint—to cover all of the

exhibits that were attached to the Complaint—has previously been identified as Exhibit 3, and that is the map which shows the Council Districts as proposed in the plan which is before the Court.

Judge Robinson: Very well. As stated earlier, they will all be received.

Mr. Stoner: Thank you, Your Honor.

(Plaintiffs' Exhibits 1 through 10 were received in evidence.)

Direct Examination

By Mr. Stoner:

Q. Mr. Beer, would you please state your full name and address. A. My name is Peter H. Beer, and my address is 5855 Bel Air Drive, New Orleans, Louisiana.

Q. Mr. Beer, what is your occupation? [56] A. I am an attorney.

Q. What is your position with respect to this lawsuit? A. I am one of the plaintiffs in the litigation.

Q. Are you a member of the present Council of the City of New Orleans? A. I am.

Q. How long have you been a member of that Council? A. We took office in May of 1970.

Q. You are finishing your first term as a councilman? A. That term will end in April of 1974.

Q. Which district in the City of New Orleans do you presently represent? A. District A.

Judge Waddy: District——

The Witness: A, Your Honor.

By Mr. Stoner:

Q. Mr. Beer, are you familiar with the Charter of the City of New Orleans, particularly the provision which requires the council to redistrict itself following each decennial census? A. Yes.

Q. Could you tell me what action the town took following the 1970 decennial census? A. Yes, sir. The actual

figures with respect to the 1970 census were not made available to us by the Governmental agency [57] which was in charge of the obtaining of the census figures until sometime in the summer, late summer of 1971. At that time, at the direction of the President of the Council, the Council Research Staff immediately transposed those raw figures, Your Honor, from the block by block census which was the way that this raw census figures came, into precincts and wards and subsequently districts of the City, because the raw census, block by block for the City as a whole, was of no use to us in redistricting the City. We had to have the raw census figures translated into district figures in order to redistrict in accordance with the Charter which provided that we must redistrict by population of the districts.

So that the Council Research Staff was directed by the President and the Council to reduce those raw figures immediately to precinct, ward and subsequently district lines in order that we might see, may it please the Court, whether we were over or under in the districts as it had to do with the population of the City as a whole. In other words, the census developed that the City had a total population of slightly under 600,000 people. So that it then, by mathematical computation, in accordance with the Charter, it became necessary for us to redistrict on the basis of approximately 118,000 people in each district, and there was no way to determine whether we were over or under in any particular district until we applied—until the Council Research Staff did the math that had to be [58] done to determine whether, for example, District A needed to be increased or reduced, B, C and D and E likewise.

Those figures, Mr. Stoner, were transposed by the Council Research Staff so that sometime by the end of 1971 we did have available from the efforts of the Council Research Staff that information not only in the raw form turned over to us by the census people but district by district, so that we were able at the very end of 1971 to determine that indeed there were disparities in the numerical definitions

of the districts or that there was disparity in the number of people in the districts, very much out of line with the approximate 118,000 that we needed in each district in accordance with the mandate of the Charter.

Q. Now, when that information became available to the Council, what action did the Council take? A. Well, the Council, first of all, determined for its own information which districts were over and which districts were under, which was pretty much a simple mathematical computation, because we knew that the mean was 118,000. It determined, reading, if the Court please, from right to—I maen from left—from right to left, it was determined that District E represented by Councilman Ciaccio, in the present—not in the plan that you are pointing at, Jim, but in the existing plan, District E, Councilman Ciaccio's district, was way over in number. Instead of having 118,000 in it, it had almost [59] 140,000 in the district.

Q. May I interrupt here for the benefit of the Court and state that the present redistricting map is not here in the courtroom or it is not displayed. The map is the proposed plan, and I believe Mr. Beer's testimony is concerning the present district plan. A. That is correct.

Q. Am I correct on that? A. Yes.

Judge Robinson: The pre-1970 plan?

The Witness: Yes, Your Honor; the one that we were elected under.

Judge Robinson: Do we have such a plan? Will it be coming into evidence?

Mr. Stoner: We do have such a plan, if it could be helpful.

Judge Robinson: No, you can continue with your preferred order of presentation. It is quite all right.

The Witness: If Your Honor please, District E was over by a fairly substantial number from the mean that we knew we were guided by under the provisions of the Charter. District D, represented by Councilman Lambert, was slightly under; perhaps 3,000 under the 118,000 mean.

District C, represented by Councilman Dupuy, was considerably under the mean. I think almost in five figures. [60] I think it was down around 97 or 98 thousand.

District B, represented by Councilman Sapir, was also considerably under the mean. District A, which I represented, was about like Councilman Ciaccio's. It was way over, and the reasons for that were, as counsel had previously pointed out to the Court, the growth areas in New Orleans have been, to a substantial extent, the 9th Ward, which is Councilman Ciaccio's district, and Algiers, which is part of District A in the present circumstances. So, that perhaps accounted for the disparity.

So, it was apparent to the Council that the districts were clearly in need of redefinition in terms of lines because they were very much in disparity with the provisions of the Charter, which said every 10 years the Council must redistrict so as to try to keep the numbers even in each district.

By Mr. Stoner:

Q. Now, when that became apparent, did there come a time when a plan of redistricting was presented to the Council and adopted by the Council? A. Yes, there was a plan as counsel pointed out in opening arguments.

May it please the Court, there is this problem, because of the fact that the 15th Ward of the City is across the river—that's where Mr. Stoner refers to as Algiers. It was obvious that some rather substantial change had to be made [61] in the district lines to take into account this disparity in population. So that the first plan was a plan that had as its cornerstone the redistricting by using Algiers to make up the numbers, so to speak, and Algiers was divided into three portions and assigned to certain districts in order to bring the numbers up, and that in effect resulted in not having to make very many other changes.

There was a great reaction against that plan in Algiers where the people were unhappy about being, as they called

it, split up. When that plan was voted on in the Council, it was passed six to one. I voted against it by reason of the fact that I felt as a representative of that area that the people had expressed themselves and that I was mandated to vote against it.

It passed six to one but was subsequently, I think about nine months later, disallowed by an opinion from the Department of Justice.

Q. That is the plan that we have referred to as Plan 1 and is the plan that was not approved by the Department of Justice in January of 1973; is that correct? A. That's correct, sir.

Q. After the adoption of that plan, were there any proposals to change the makeup of the Charter of the City of New Orleans so as to change the number of councilmanic districts? A. Yes, sir.

[62] Judge Waddy: Is that an issue in question? I am asking counsel for the Government. The question is asked of the witness now as to the proposal to change the makeup of the council. Is that disputed? Is that questioned?

Mr. Shurtliff: No.

Judge Waddy: I think as a question of time, on matters that are not disputed, we can proceed without using that time.

Mr. Stoner: May we stipulate that there was an ordinance adopted by the City Council to increase the size of the City Council to 11, consisting of nine elected councilmanic districts and two at large.

May we stipulate to that?

Mr. Shurtliff: We may, and the referendum election was defeated by a vote of the people.

Judge Robinson: Do you accept that amendment to the stipulation?

Mr. Halpin: With the understanding that that stipulation does not imply that the City Councilmen in fact supported the enlargement of the City Council and made any effort to attempt ot have the electorate of the City of New Orleans——

Judge Waddy: The stipulation is only to the facts. The inferences to be drawn from the facts may be argued at the appropriate time.

Mr. Halpin: That's the only indication.

[63] Mr. Stoner: May we at the same time stipulate that following the vote by the electorate and the failure of the ordinance to be approved by the electorate, another plan to increase the size of the City Council was adopted by the City Council, namely, a plan to increase the Council to nine, consisting of seven councilmanic districts and two at large, and that that matter was presented to the electorate.

Judge Robinson: May I make a suggestion, if you don't mind. We would be taking the recess for lunch in a very few minutes. Why not get together with counsel for the Government, that is, for the defendant, and for the intervenors, and see how much you gentlemen can stipulate in terms of paragraphs of your complaint. That is the only document, I think, that would serve as a substantial point of reference, because we simply haven't had time to get responsive pleadings from other parties.

Do you think you gentlemen might do that? And would you give me an estimate as to how much additional time we would need to give you, that is, additional to the normal hour and 15 minutes for lunch.

Mr. Stoner: Your Honor, I think we should be able to stipulate those facts in a matter of minutes.

Judge Waddy: I think if you could stipulate, we could expedite this matter without losing the effect in any manner.

Mr. Stoner: Yes.

[64] Judge Robinson: Very well. We will take the luncheon recess at this point until 1:45. We are hopeful that when we resume at 1:45, you will have such a stipulation. If you need a few minutes more, notify the marshal.

Mr. Stoner: Thank you.

Judge Robinson: And we will indulge you.

At this point the Court will stand in recess until 1:45.

(Whereupon, at 12:35 o'clock p. m., proceedings in the above-entitled matter were recessed to reconvene at 1:45 o'clock p. m. this same date.)

[65] AFTERNOON SESSION

(Whereupon, at 1:55 o'clock p. m., proceedings in the above-entitled matter were resumed at the conclusion of the luncheon recess.)

Judge Robinson: Mr. Stoner, you may resume.

Mr. Stoner: Thank you, Your Honor. During the recess we have attempted to arrive at stipulations based on the allegations as contained in the Complaint.

I can report that it is stipulated between the parties that the matters alleged in Paragraphs 1 through 8 will be stipulated to.

Judge Robinson: So stipulated, gentlemen.

Mr. Stoner: With respect to Paragraph 9 and the Complaint, the Government will stipulate to the allegation contained in that count. The intervenors would stipulate to the facts in there except the second sentence. That they would deny.

Judge Robinson: Very well. Did you say the second sentence?

Mr. Stoner: The second sentence in Paragraph 9 will be denied by the intervenors but otherwise stipulated by the parties.

Judge Robinson: Very well.

Mr. Stoner: With respect to Paragraph 10 of the Complaint, the parties will stipulate to everything except the [66] date. The Government will not stipulate to the date of May 4, 1972.

Judge Waddy: Will they stipulate as to any date?

Mr. Stoner: Mr. Shurtliff, will you stipulate as to any date?

Mr. Shurtliff: We would stipulate, Your Honor, that it was submitted in the fall of 1972 but——

Judge Waddy: Not May 4th?

Mr. Shurtliff: It was not May 4th.

Mr. Stoner: I believe it is the Government's position that the submission of May 4, 1972, was not a complete submission.

Judge Corcoran: Is it important, so long as it was denied anyway?

Judge Waddy: But, nevertheless, this is a fair submission; is it not?

Mr. Stoner: Yes.

Judge Waddy: This is a fair submission, but it was stipulated that it was submitted.

Mr. Stoner: Yes.

Judge Waddy: All right.

Mr. Stoner: With respect to Paragraph 11 of the Complaint, the matters contained therein will be stipulated by the parties. The matters in Paragraph 12 of the Complaint will not be stipulated. The matters contained in Paragraphs 13, [67] 14, 15 and 16, all of which appear on Page 4 of the Complaint, will be stipulated.

Judge Corcoran: Including the figures?

Mr. Stoner: Yes, including the data contained in Paragraph 16 of the Complaint. Paragraph 17 of the Complaint will not be stipulated. I believe the parties can agree that hearings were held.

Paragraph 18 of the Complaint will be stipulated. The matters in Paragraph 19 cannot be stipulated.

With respect to that, I believe the parties can stipulate that the ordinance was passed by the Council and that it was disapproved by the Assistant Attorney General.

Judge Robinson: Are counsel agreeable to so much by way of stipulation?

Mr. Shurtliff: We are.

Mr. Halpin: Yes.

Judge Robinson: Very well.

Mr. Stoner: Paragraph 20 cannot be stipulated. I believe the parties can stipulate with respect to the matters in Paragraph 20 that the matter was submitted to the electorate and that the vote was to retain the seven-man council or to replace it with an eleven-man council.

Judge Robinson: Would you repeat that again, Mr. Stoner?

Mr. Stoner: I believe the parties can stipulate that [68] the matter was submitted to the electorate, giving the electorate the choice of either keeping the present seven-man council or replacing it with an eleven-man council.

Judge Robinson: Very well. Is that agreed to, gentlemen?

Mr. Shurtliff: May it please the Court, I don't have any serious reservation about it, but I would not want the stipulation because it wasn't framed to the people in terms of a choice. The issue was to increase the size of the City Council from nine to a nine/two; nine districts, two at large. That was the question. There was no question on the ballot as to retaining the present system. That was the result of the vote of the people, however.

Judge Robinson: You will stipulate, however, that it was submitted to the electorate, period?

Mr. Shurtliff: Yes, sir.

Judge Robinson: Is that agreeable, Mr. Halpin?

Mr. Halpin: Yes.

Mr. Stoner: I believe the parties will also stipulate that the proposition did not pass.

Judge Robinson: Is that agreeable?

Mr. Shurtliff: Yes.

Mr. Halpin: Yes.

Judge Robinson: All right.

Mr. Stoner: With respect to the items in Paragraph 21 [69] of the Complaint, the parties cannot stipulate, and I believe that the parties cannot stipulate to the balance of the Complaint, although I would submit that the parties can stipulate as to the passing of the ordinance to increase the Council to nine men, a nine-man council, and that that

matter was presented to the electorate and that it was defeated.

Mr. Shurtliff?

Mr. Shurtliff: We would stipulate to that.

Mr. Halpin: Yes.

Judge Robinson: Very well. Does that conclude the stipulations, Mr. Stoner?

Mr. Stoner: That would conclude the stipulations as to the Complaint.

Judge Robinson: Very well. Thank you very much. I should think that this should help a great deal.

You may resume your examination of Mr. Beer.

Mr. Stoner: Thank you. There is one other stipulation that the parties have agreed to; that is, the map that has been superimposed on the large map as being a map representing the present districts as presently constituted, that is, as constituted since 1961 to the present time.

Judge Robinson: All right, No. 11.

Judge Waddy: Is that Plaintiffs' No. 11. I would ask that it be admitted into evidence as Plaintiffs' Exhibit No. 11.

[70] Judge Robinson: By stipulation it will be admitted.

(Plaintiffs' Exhibit No. 11 was admitted in evidence.)

Mr. Stoner: Now, resuming the questioning of Mr. Beer, if I may——

Judge Waddy: I think it would not be necessary under the circumstances to question Mr. Beer concerning any of the matters that have been stipulated.

Mr. Stoner: Yes. Thank you, Your Honor.

Direct Examination (Continued)

By Mr. Stoner:

Q. Mr. Beer, I understand from your previous testimony that you at the present time represent District A. A. Yes.

Q. Could you describe what sections of the City in terms of sections of the City that present district represents? A. It represents the section of the City that is generally referred to as the Carrolltown Section, the University section, the Uptown section, and then it crosses over and down river and represents the entire area which is known as Algiers, which is in fact the 15th Ward of the City. It comprises the 17th Ward, which comes in at that rather thin line, Your Honor, which is the line between the Jefferson Parish boundary and a wide thoroughfare that cuts through town, and inside of that sort of thin line is what is called the 17th Ward. It opens up [71] a little bit at the bottom and is still the 17th Ward.

The 16th Ward is just under it. The 14th Ward is in that sweep over to where the line is drawn, and then it skips over the river and goes to Algiers. That's the 15th Ward. So that District A is comprised of wards of the City in their entirety, and they are the 14th Ward, the 15th Ward, the 16th Ward and the 17th Ward.

Q. Now, Mr. Beer, would it be fair to state that the Algiers section is geographically some distance from the other part of your district? A. Yes.

Q. And have you found in representing that district that that creates problems? A. Well it has created a problem which you and the Court alluded to in terms of the fact that there is but one bridge and it is up—it is, I should say, down river in the sense that it is just about at the line between District B and District C. Yes, sir, right in there. And there is a pressure on the part of the people living there. That bridge is satisfactory in the sense that it is in Algiers and serves Algiers into the downtown area.

But there is a tremendous pressure from the population that is on the other side of the river where you are pointing to now to get across, and there has been a tremendous pressure to put that other crossing in District A uptown. People uptown [72] in District A are violently opposed to the bridge because they contend it will turn their area into a thoroughfare, whereas the people in Algiers are very much in favor of it because they contend that it will take the pressure off of the only bridge that exists, which is fine for them, but is jammed about two and a half times its constructed capacity because of the great pressures from that whole sweep there also using it to come into the central business district.

Q. Now, has this caused any problems for you as a councilman in fairly representing the respecitve interests of your council district? A. Well, it was created a sort of schizophrenia in the sense that there is a tremendous pressure from the constituency of about 55 or 56 thousand people in the Algiers section for a bridge to come into uptown and a very violent reaction on the part of that whole uptown section, which is probably another 50 thousand people, against any bridge coming into that area. So, of course, it has been entirely impossible to be a partisan in behalf of both interests.

Q. Now, could you identify on this map where the canal ferry is located? A. Yes, sir. It also runs from District C at Canal Street right across to District A, Algiers. In other words, the connecting link of the Canal Street Ferry is right in the middle of what is now C and into the middle of what is now A across [73] the river.

Q. Is there any other public transportation means of getting from the main part of the city to Algiers? A. No, sir. That Canal Street Ferry and the bridge are the two public or privately-owned sources of access.

Q. Now, have there been any problems with respect to traffic on the ferry across the river? A. Yes, sir. Well, it's been entirely inadequate in the sense that it doesn't come anywhere near taking the pressure off of the need for that access, and it's also been compounded and complicated by the fact that railroad tracks run along the edge of the river there and very often block that ferry access way, which is then inoperative sometimes for rather long periods of time, in terms of motorists trying to get on the ferry before it leaves to make its roundtrip across the river.

Q. How long does it take—let me ask, first, how wide is the river at this—— A. It is a mile and one-eighth.

Q. A mile and one-eighth? A. Yes, sir.

Q. How long does it take to cross the river on the ferry under normal traffic conditions? A. Once aboard, I would say it takes somewhere between 10 and 15 minutes. But, sometimes, Jim, the line gets pretty long and it doesn't come anywhere near taking all the people who [74] are in that line.

Q. What I understand from your testimony is that the pressure for transportation across the river to Algiers is a very great problem for the populace of New Orleans at the present time? A. It's probably the most underlying political problem outside of the usual—it's a singular most underlying problem, I would say, in terms of housekeeping.

Q. Does the City Council have authority to authorize the building of a bridge or to increase ferry service? A. No, sir. This is all run through the office of the State Department of Highways.

Q. So, it is your testimony that whether or not a bridge, another bridge should be constructed or an additional ferry should be put on or traffic routes is beyond the power of the City Council of New Orleans to deal with? A. Yes. The City Council, in fact, has even ordinanced certain traffic regulatory ordinances on the bridge hoping to do something to alleviate the crush of traffic in terms of truck use at certain authorized times and vehicular use at certain authorized times and minimum speeds, contending that they could at least ordinance traffic regulations because the bridge actually began and ended in Orleans Parish. But the bridge authority, which is under the State, has effectively just disregarded our ordinances. The ordinances which we passed in [75] connection with traffic regulations on the bridge have not been enforced by the bridge police who are responsible to their board, which is a state created agency.

Q. Now, describe the type of population that lives in the Algiers section. I mean by that, is it a stable community, a growing community, or what is the status of the Algiers area of the City? A. Well, Algiers is essentially a bedroom, but I would have to say that it really is far more a complex than that. But in my own mind, I divide Algiers into Old Algiers and New Algiers, and the demarcation is considerable.

New Algiers is pretty much an expanding area of—(Mr. Stoner indicating on map)—yes, sir, in the back, is more what you would think of as suburbia with some rather substantial sprinklings of apartment buildings, a fairly transient amount of population. It is a fairly local population in the suburbia type sections.

Then Old Algiers is a pretty mixed black and white area of people who, in many instances, have lived in Algiers a long time. Algiers grew up at the river and only, Your Honors, when the bridge was built, when the only access was the ferry boat, Algiers pretty much clustered around the river. When the bridge was built, it generated the expansion into the back part of that 15th Ward in terms of, I would say, middle to fairly expensive homes, and also a great number of apartments.

[76] Q. Now, when was the bridge built, Mr. Beer? Do you know approximately? A. It was in the early '50's. I can't exactly state. It was sometime in the early '50's that it was completed.

Q. Is there anything in common here between the river area of Algiers and the river area directly across the river from Algiers? A. Well, I would say that, of course, right on the river, the use is pretty much identical in terms of the fact that there is a lot of river activity. As you go away from the river in both directions, you get into residential areas.

Q. But the activity along the river at both places is similar; is it? A. Yes.

Q. Is it barge traffic and shipping? A. Barge and ship traffic. For example, we have wharves on both sides of the river at that point, although the main wharfage is on the side—yes, sir, on that side.

Q. You mean this (indicating), the old section, the center section, where it says Port Algiers? A. Yes.

Q. But there is wharfage in Algiers; is there? A. Yes, and a lot of barge activity on the river.

Q. Now, is there any similarity between the river frontage of your two districts? I am speaking of Algiers and the [77] present district that you represent. A. Not very much. Once you get up to what we call uptown, the wharf system has just about ended. (Mr. Stoner indicating on map.) Yes, sir. In other words, National Avenue, which would be about the second big street in, right about there, is the last of the wharves. There is a wharf there. Then the frontage from there on up to the Parish line is pretty much frontage in a park area, the Audibon Park Area.

Q. Now, with respect to District B, is that pretty much what is on here, the river frontage, that wharf area? A. Yes, sir, entirely. That's the heart of the wharf area.

Q. Do I understand that all of the river frontage of present District C is wharfage? A. Yes, I would say all the way up to and including parts of District E on the river are what you think of traditionally as wharf area.

Q. Now, this present District A, has the population grown in the last 10 years, I mean, since '61 when the last redistricting occurred? A. Yes, it has grown primarily because of the development in Algiers that I have previously referred to. I would say that it hasn't grown in any substantial extent on the other side except perhaps in that thin line area going towards the lake, there has been, I'd say, some additional home building, [78] but nothing like the massive construction in Algiers.

Q. Now, you testified this morning before the luncheon break that there have been statistics as to the 1970 census, the population of the districts as they then existed. Now, on those statistics, was Section A, the population of Section A, present Section A, more than 118,000? A. Yes, sir, it was almost 140,000.

Q. One hundred forty thousand? A. It was about, let's say, 137,000 or 138,000.

Q. Now, do you draw from that then that it would be necessary to decrease the size of present District A in the 1970 redistricting plan? A. The Charter required it. There was no room to doubt that the provisions of the Charter in reference to the decennial census required us to comply in numbers to it. So that the math was easy. I needed to, in effect, lose 20,000 people.

Q. Now, turning our attention to Exhibit 3, which is the present plan that is before the Court, is there any similarity between the population of Algiers—and I call the Court's attention to the fact that the proposed District C includes all of Algiers as well as the area directly across the river from Algiers and extends on up to the lake and through the City park. A. Yes, sir.

Q. Now, is there any similarity between the population of those two districts other than along the river, which I think [79] you have previously fully explored? A. Yes, there is a definite similarity in the sense that there is back in that back part of C and in the bottom part of C and in Algiers and almost—I'd say that a lot of the areas there would be almost interchangeable in the sense of looking the same and providing about the same type of single family housing.

Q. Could they be described as relatively recent growth areas of the City? A. Yes. The lakefront area, what you are pointing at now, of C is a little older growth area than the bottom part of proposed C, but essentially the two are very similar.

Q. So that proposed District C has similarities along the river in Algiers, and likewise in the extremities; both have similarities in the type of housing and the type of people. Is that a fair statement? A. That is a fair statement.

Q. Now, Mr. Beer, did there come a time when the City Council took under advisement a plan of redistricting after the first plan was disapproved by the Attorney General and after the two referendums were defeated? A. That's correct.

Q. Could you describe to us when that was, approximately, and, furthermore, what factors did you as a councilman consider in determining the redistricting or considering the [80] redistricting of the City? A. Well, actually, to be completely specific, there had really been four different efforts where the council went to the people with proposals to increase the size of the council. For various reasons, all but two of those ordinances ended before any action was actually taken by the people. The matter could not even go to the people for decision without ordinances enacting that as a proposal for the people to vote on under the terms and provisions of the Charter. But, without going into all that detail, because I think it is——

Q. Well, do I understand the purport of that testimony to be that the only way an election could be held would be for the council first to come up with a proposal and authorize the election? A. Exactly. In other words, the council had to take affirmative action by ordinance in order to even submit to the people the question of "Do you desire to increase the size of the council?" The council is not able on its own to do that. It is a Charter provision and it must go to the people for a vote. It is just like a corporate charter cannot be changed by the Board of Directors. The council could only authorize its as a legitimate issue to be decided by the people, and on its own motion it did that on four separate occasions and passed four separate ordinances with respect to either nine or 11-member plans.

[81] Finally, the people having spoken on the two that actually got to the people, not through any fault of the council but by some Court action by some of the people who are interested in this litigation, apparently, it nevertheless evolved that in neither of the instances where the ordinances went to the people did the people authorize the increase.

Accordingly, by late '72, or early '73, it was apparent to the Council that there was no way to redistrict in anything other than a five district, two councilmen at large

proposal, and the other proposals having already been voted down by the people. So that there was no longer any way that the Charter could be changed. The time had come for us to resolve the issue on the basis of two councilmen at large and five district councilmen, the people having spoken on two occasions, the Court on one other one, and the Mayo on one other one, to obviate the ability of the people to have any further opportunity to increase the size of the council.

Q. All right. Now, at that posture, what did the council do? A. The Council restricted—it held public hearings and consulted with the Council Research Director and his the ordinance which subsequently led to a vote of the staff and subsequently Councilman Moreau introduced the ordinance which subsequently led to a vote of the Council to redistrict in accordance with——

Q. Exhibit C? [82] A. Excuse me. —with the plan that is——

Q. Exhibit 3? A. Yes, sir.

Q. Now, what factors did you as a member of the Council take into consideration in voting for this plan? A. Well, I took into consideration the mandate, which we obviously had from the Charter to do it, and I would say primarily the guidelines set out in the Voting Rights Act of 1965 and in certain litigations that had preceded all of this in Louisiana, the wording of which all of us became familiar with in the course of our discussions with the Council Research Staff and which, if I may refer——

Q. Are you referring to litigation regarding the redistricting of the City for the purposes of the State Senate anud the State House of Representatives? A. Yes, sir. We had before us the language of the United States District Court in Bussie versus the Governor of Louisiana, which is in 333 Fed. Sup. 452 at 456. It is very brief. It says that it must within reason conform to the one-man one-vote rule. It must not be so designed as to dilute the voting strength of any person or group and it must not be a device of gerrymandering in order to favor any person

or group. When possible it should follow parish and ward lines as well as historical and natural boundaries, but the use of such boundaries could not be tolerated if either the purpose or the result [83] is to deprive the people of the benefit of the one-man one-vote principle, or to deprive them of the anti-dilution principle now firmly established in the law.

Judge Corcoran: What was that citation again?

By Mr. Stoner:

Q. Would you repeat the citation? A. Your Honor, it is 333 Fed. Sup. 452 at 456.

Q. Do I understand that that was the decision of the Court in the redistricting of the City with respect to the Louisiana State Legislature? A. Yes, sir, specifically with respect to the senatorial districts.

Q. Now, did the redistricting plan which is here, Exhibit C, follow the traditional ward lines of the City? A. Yes. It was no longer possible to follow them exactly because the exact ward lines didn't work out mathematically. So, the Council Research Staff tried to follow them as closely as they could, bearing in mind the old lines or the lines that existed as a result of the redistricting that took place in 1961, the only rather substantial difference being the consensus of the Council that Algiers should be returned to District C where it had traditionally been but for this one redistricting that took place in 1961. District C had previously included all of Algiers. It was removed in the redistricting of 1961, and the consensus of the Council in what [84] we have come to refer to as the Moreau Plan, was to return Algiers to District C.

Q. (Indicating on map.) A. Correct. With that exception, the plan generally followed as best it could the line that existed in the '61 plan. You can see that A having had Algiers with approximately 55 or 58 thousand people taken away from it on that side of the river, had to thicken out some on that side. (Mr. Stoner indicating.) Yes, sir.

So, you see where it thickens out pretty much all along the way, and this was, I would assume, and feel confident to state, in accordance with the general tenor of the directions that the Council had given in general concern to the Council Research Director and his staff, which were subsequently translated into this chart.

Q. Now, what happened in the proposed plan with respect to District B? A. Well, again, District B was again pretty much widened out, so to speak, because it had not included enough—District B in '61 was very short by the numbers. It was down around 100,000 and needed 118,000. So, the effort was made to widen it consistent with the mandate of that Federal Court opinion which said that the lines must be as exact and composite as possible, and an effort was made to simply expand it, holding essentially what it had before, giving way to the expansion that [85] had been necessitated in A, which pushed it to your right a little bit, and then in turn it was pushed to the right a little bit.

Q. Now, Mr. Beer, what is this street right here, this large black line? A. I can't read it.

Judge Robinson: Do you want to step over to the diagram?

By Mr. Stoner:

Q. It's Canal. A. Okay. I can see it, Your Honor. That would be Canal Street.

Q. It is labeled on the map as being Canal Street. A. Yes.

Q. Would I take it from your testimony that the area from old District B that had been added would be to push the B line on to Canal Street and make that the dividing line between C and B, and to add the area that seems to be Pontchartrain Expressway, between Pontchartrain Expressway and Canal Street? A. That's correct.

Q. This would be necessitated by the fact that the old District A was broadened so as to increase its population? A. Well, Jim, it was, plus the fact that B had to be even a little bit more because it went up to 200,000.

Q. Do you mean by that it was expanded towards the lake? [86] A. Well, in other words, if you had just pushed it over enough to offset what A had needed, that wasn't enough, because B was still short in the old figures by about 18 or 19 thousand. So, you had to go a little bit more, and that's how it got to Canal Street.

Q. Now, do you know what the population of District B is, white versus black? A. No. I know that there is a black majority.

Judge Robinson: I had understood those figures are stipulated. They appear in Paragraph 16 of the Complaint.

Mr. Stoner: Yes, Your Honor.

Q. So that District B has a majority-——

Judge Robinson: Was that the predicate for a question to the witness? Did you ask the question about the population figures as a predicate for another question?

Mr. Stoner: Yes, I did.

Judge Robinson: Well, just go ahead and use them. Do you have the figures? I have them here, 76,109. You said B; didn't you?

Mr. Stoner: Yes, District B has a population——

Judge Robinson: Frame your question on the basis of the data in Paragraph 16. That will be quite all right.

Mr. Stoner: Thank you, Your Honor. I would call the Court's attention to the fact that District B does have a [87] majority of black voters.

Judge Waddy: The stipulation is that it has 53.1 per cent.

Mr. Stoner: 53.1 per cent black voters.

Judge Robinson: Well, yes. In one place your allegation is registered voters. But in the data set forth in Paragraph 16, it says population, and then when you get back to the percentages, you get back to registered voters again. Perhaps you could explain that to us.

Mr. Stoner: Yes, sir, Your Honor. I would read that on the second plan, the population of District B as being 118,678 people.

Judge Robinson: That's population; right.

Mr. Stoner: Right. The population being divided 76,109 black and 42,569 white.

Judge Robinson: So, the only statistics we have in Paragraph 16 that have to do with registered voters are the percentage figures; correct?

Mr. Stoner: That's right, Your Honor, and that figure is 53.1 per cent of the registered voters.

By Mr. Stoner:

Q. Now, were there any other factors that the City Council considered or that you as a member of the City Council considered in adopting the plan which is Exhibit 3? A. Well, the plan as such, as proposed by Councilman [88] Moreau on the basis, as I understand it, of certain plans that he had requested be prepared for his review. This was the plan that he subsequently introduced at a time when, I believe, he was President of the Council, and this is the plan that the members of the Council subsequently passed; this plan having not been passed by them until subsequent to the public hearings which were held in connection with the redistricting matter generally.

Q. So, you are stating that this was a product of the City Council Planning Staff and, in addition, public hearings were held on the proposal—— A. Yes.

Q. —prior to the time that the Council adopted the plan? A. Yes.

Q. Now, was the plan publicized, well-publicized in the City and among the voters prior to the holding of the public hearings A. I would say that it was well-publicized in the sense that various newspaper articles carried the lines and discussed it, and it was discussed in the papers, not just the main issue papers, but the papers were, I think, of predominantly black subscription, as well as papers that had predominant—for example, the French Quarter population that read them. It was a fairly well articulated matter. I wouldn't say that there was [89] any unanimity of thought about it, but it certainly received wide consideration and discussion.

Q. And there was wide publicity to the proposed plan prior to its adoption? A. Yes.

Q. Now, did you attend the public hearings or hearing in connection with the proposed plan? A. Yes. The Council held those public hearings. They were held in the Council Chamber of the City of New Orleans.

Q. Were they well-attended hearings? A. Yes.

Q. Were various groups from around the City and throughout the City represented and given an opportunity to express their views with respect to the plan? A. Yes.

Q. Did you as a Council member take those matters into consideration and thier objections into consideration or their proposals into consideration in adopting the present plan? A. Yes, I would say that we—I can't, Jim, possibly describe the mental process of anyone other than myself. But I would say that in terms of my own mental processes, I tried to consider the factors that had been underlined at the public hearings and also tried to consider the validity of it in terms of all of the things that you mentioned, plus the overall effect it would have on the City.

[90] I might say that I don't think there is a question of that fact, that there is a general regard for the fact that the percentages do exist in terms of the black and white population and that there is clearly a basis for understanding the very strong contentions that were made by various groups concerning black representation on the City Council.

Q. Did you vote for this plan, Mr. Beer? A. Yes, sir.

Q. Do you believe it to be a fair and equitable plan for the redistricting of the City and in compliance with Section 5 of the Voting Rights Act of 1965 and otherwise in compliance with the law? A. I do.

Q. And is this plan essentially similar to the plan that was adopted by the Court in the redistricting of the area of the City for the State Senate? A. Well, I can't say that it is or isn't because I am not exactly sure of the Senate district lines, but the traditional north-south run-

ning boundaries are certainly the same, essentially, as the senatorial districts.

Q. Now, Mr. Beer, have there been—— A. For the Court's benefit, I probably should point out that the orientation of that map is exactly north-south.

Q. You mean by that from the river to the lake? A. Yes, sir, it is straight north; from the bend in the [91] river up to the lake it is due north, right.

Q. Mr. Beer, are you aware of any citywide elections that have been held in the recent past in which a black candidate was a candidate for any citywide office? A. Yes.

Q. What was the office? A. Well, I think the most recent citywide election was for a seat on what is called the Louisiana Court of Appeals for the Fourth Circuit, which is the Circuit Court which hears cases on appeal from various district courts throughout the general area. A Judge Morial, who had formerly served in the State Legislature, was elected to that position citywide.

Q. What is the color of Judge Morial? A. He is black.

Q. Now, are you aware of any other black men who have run for citywide office in the recent past? A. Judge Augustine was recently elected to the Criminal District Court for the Parish of Orleans on a citywide basis. Judge Morial had prior to that election been elected to serve as the juvenile judge of the city. Just offhand I don't recall any other recent citywide elections. There have been a number of black representatives in the state legislature elected from the city. I think that's the answer that I would give to you.

Q. Judge Morial's election that you refer to, was that a recent election and could you tell us when they had—— [92] A. Well, he hasn't taken office yet.

Q. When was the election held? A. I would say it was within the last six months. I'm under oath and I can't be positive of that, but I think it was within approximately that time.

Q. How about the other elections that you have referred to; have they been in the recent past or was that sometime

ago? A. Judge Augustine was elected since we took office. So, that would be at least since 1970. Again, I can't tell you the exact date.

Q. So at least in those two occasions, the two elections that you referred to, both have occurred since 1970 and they have both involved black men running for an office on a citywide basis, and in both cases the black man has been elected; is that correct? A. Yes. In all of the instances that I recall, there were white candidates.

Q. Now, do you know the President of the School Board of the City of New Orleans? A. Yes.

Q. Do you know the race, the color of that person? A. Yes. I wasn't thinking about the School Board. There have been black citizens elected to the School Boards on a citywide basis.

Q. They are not by districts but rather by citywide basis? [93] A. That's correct.

Q. Do you know how many members have been elected on a citywide basis to the School Board who are of the black race, black color? A. I think two. I think two. I am not sure.

Q. Have they been recent elections? A. Yes. The School Board is particularly and peculiarly outside of the ambit of the City Council's day-to-day activities, and I will have to plead guilty to not being as completely current with their status.

Q. But you do know that members of the black—or persons who are black in color have been elected on a citywide election to the School Board? A. Very definitely; yes, sir.

Q. Now, Mr. Beer, what are the responsibilities of a City Councilman in the City of New Orleans? Is there any distinction between the members at large, the duties of the members at large and the duties of the district councilmen? A. Yes. Addressing myself to the first part of your question, I would say that the duties of the Council generally are to serve as the legislative branch of the Government of the City of New Orleans. I might say that

New Orleans at one time had a commission form of Government where the old commission council members were considered more as in an administrative capacity than councilmen are under the provisions of the home [94] rule charter which passed in about 1952. Since the home rule charter, the Council of the City of New Orleans has formed a legislative branch of the Government of the City.

As far as the distinction is concerned, the councilmen at large are, as the name implies, elected throughout the entire City.

If the Court please, that means from the Parish line—New Orleans has a strange peculiarity in the sense that it occupies all of Orleans Parish, which is the same as a county in any other state. Parishes in Louisiana are essentially the same as counties in the other 49 states. We just happen to call them parishes.

But Orleans Parish has exactly the same lines as the City of New Orleans. The City of New Orleans includes all of Orleans Parish. Those two councilmen at large are elected from all of Orleans Parish. They run in the same citywide manner as the Mayor of the City in that he is elected as well from every voter in the City, which is also every voter in the parish.

Their duties are distinct in that only they may serve as President of the City Council. The district councilmen can only serve as Vice President of the Council.

But perhaps more important, they represent the voice of the people in the City as a whole instead of the various districts, and they also serve in a number of board capacities which carry perhaps even greater responsibility than the district [95] councilmen in terms of the types of appointments that they serve in. But they have only the same vote on the Council in terms of the legislative processes of the Council.

Q. Now, do they have any administrative duties which the district councilmen do not have? A. Yes. They serve as the acting mayor. One may be designated by the mayor as acting mayor in the absence of the mayor from the City

for some charter-provided length of time, which I am not exactly sure of.

Q. Now, you refer to the mayor. Is the mayor an elected official? A. Yes, sir.

Q. And are his responsibilities primarily that of the executive—— A. Yes.

Q. —as opposed to the legislative? A. Yes, sir; he is the chief executive of the City and the head of the administration of the City as opposed to the legislative branch, which is the Council.

Q. But in the vote on City issues, do I understand that each of the seven has an equal vote? A. That's exactly right. Any measure, except to override a veto or one or two other unusual type matters, is passed on the vote of four councilmen, a majority of the seven-member Council. [96] Q. Now, at the time that this plan which is before the Court was adopted by the Council, was there any conscious effort made to retain the present members of the Council, to draw the district line so as to retain them in their districts? A. Well, I will have to answer this way: They were in those districts, so it would have taken a conscientious effort to put them out of the district in drawing the lines. In other words, each one of us, by reason of our having been elected to that office, had to reside in the particular district that is indicated in the center map. So, if you in effect expanded those district lines, you would have had to have gerrymandered them in some way to take us out of our districts. We all were in districts that were, in most instances, expanded in terms of the ones that had to be expanded.

Councilman Ciaccio represents all of the 9th Ward and happens to live in one section of it. But, essentially, there was no calculated attempt, as far as I am concerned, made to do it one way or the other.

There certainly is no basis for me to say that we were either so politically naive or so altruistic as not to have that considered by us in terms of looking at the plan. Certainly no councilman had any reason to contemplate

that the Council Research Staff plan would in and of itself calculatedly gerrymander the existing lines to take him out of his district.

Q. But that was not a factor that was considered equally [97] along with the other factors that you previously testified to with respect to drawing the lines? A. Well, it certainly would have been considered, I think, a calculated effort to do something inconsistent without trying to follow the traditional lines and the mandate that we had from the Charter for someone to be put out of his district. I am not contending for a moment that we wouldn't have reacted to that if its—but it would have taken some sort of change inconsistent with the orderly change that was made in '61 when we were redistricted to have achieved that. It has been, of course, contended that we calculated to perpetuate ourselves in office, which I reject.

Mr. Stoner: I have no further questions of this witness.

Judge Robinson: Mr. Shurtliff.

Cross-Examination

By Mr. Shurtliff:

Q. Mr. Beer, you state that it would have taken a calculated effort to take you out of your districts in view of your desire to follow the ward lines; is that what you testified to? A. Well, I can't remember the exact words that I testified even though it was just a moment ago, but it is my feeling that everyone was pretty much in his district, and it would have taken something not consistent with the consistency [98] that we were trying to achieve to take him out, so to speak.

Q. What was that consistency? A. The consistency was to follow the general north-south lines, the general ward configurations of the City, exactly as had been the case in the '61 redistricting and, what we felt was the case here. In other words, the effort was not to do violence to what had been the general line of demarcation as far as drawing those lines were concerned.

Q. Were those ward lines followed in 1961? Were they ordained by the Charter or by ordinance or by the Constitution of the State to be followed at subsequent reapportionments or redistrictings? A. No, I don't think so. I think that it would be unfair to state that. I don't think that the Charter or any State written mandate necessarily requires that. By 1971, it was one of the provisions that was more or less set out in the Voting Rights Act of 1965, and by 1972 it was one of the provisions enacted in Bussie versus McKiethen, which we try to follow, which did say that traditional lines should be considered.

Q. How many wards are there in New Orleans? A. Seventeen, sir.

Q. What function do wards play in the Government of the parish or of this City? A. Well, traditionally they have been in—at one time [99] they were pretty much—they corresponded very much to representative districts in the City, that is, to the State legislature. They have been used in groupings to elect certain Federal and State officials. And, of course, the precinct lines are the lines just for the neighborhood voting booths. In other words, the precinct lines, which is the next subdivision down from the ward, are primarily used as a voter grouping entity.

Q. Are any officials elected from the ward or wards in the City? A. I think, sir, that some officials at one time. There is no doubt in my mind that at one time and still to a certain extent certain members of the State House of Representatives are elected specifically from wards.

Q. All right. A. Even though they are now called, say, state representative district 82 or something like that. But for years they were like the third ward.

Q. And do you know any present house district that is conterminous with a ward in the City? A. I simply have to answer in terms of the fact that I don't know, because it is not—I can't say that there are or there aren't. I can just plead complete ignorance on the question because it is something that I just don't know.

Q. Are any other officials, to your knowledge, elected [100] from the ward? A. I think the wards may still form the basis for election to the Democratic Parish Executive Committee. I am not sure of that, but I think that the Parish Democratic Executive Committee is elected and was for years. I just don't know whether it still is or not. Again, I am ignorant on the question. Certain senatorial districts, state senatorial districts essentially follow some ward lines.

Q Are those the senatorial districts set out by the Court in the Bussie case, the District Court? A. Well, actually—let me see. No, they are the ones that were set out by the Fifth Circuit. See, in that case, the District Court said one thing and then the United States Court of Appeals for the Fifth Circuit essentially returned the senatorial districts to the ward lines by a mandate down to the U.S. District Court for the Eastern District of Louisiana.

Q. How many senatorial districts are there in Orleans Parish or the City, because they are conterminous? A. I think there are eight, seven or eight.

Q. How many black senators are there? A. I don't think there are any.

Q. Are you familiar with—— A. I know there are none.

Q. Are you familiar with the population statistics for those senatorial districts? [101] A. No, I really don't know much at all about the senatorial districts. My first exposure to public office was serving on the Council of the City of New Orleans, and I don't know much about the exact senatorial districts or for that matter the state house districts.

Q. You testified that you tried to follow the court's opinion in Bussie, the District Court opinion; is that correct? A. Yes. I am not talking about the senator's case. Bussie versus McKiethen is another case, a different case.

Q. But that case also involves the senate; does it not? A. Yes.

Q. You were talking in terms of the house. A. Sir?

Q. In terms of the House of Representatives. You followed Bussie insofar as it pertained to the House of Representatives? A. We followed—I think we tried to follow Bussie just generally speaking. I don't think that anybody calculated to delineate between one case or another. But the language in Bussie was essentially what I think the charge was from Councilman Moreau to the Research Staff.

Q. How many House of Representative districts are there in the parish? A. Again, I am firing from the hip, but I would say perhaps 15, something in that range.

[102] Q. And how many, if any, of those are served by blacks? A. Excuse me. Let me just preface that by saying some of those house districts jump across parish lines. So, in other words, in some instances the guys representing part of New Orleans and a part out of New Orleans.

Q. How many of those districts are there? A. I'm not sure, I know of one.

Q. How many of those—— A. I know of one senatorial district that is like that.

Q. That goes outside the parish? A. Yes, sir.

Q. How many of the House of Representative districts are there that are represented by blacks? A. I believe about four or five.

Q. And that plan was set down by Judge West in the Bussie case? A. I believe so. I think that's correct.

Q. You stated that there are, to your knowledge, one Senate district and some House of Representative districts that go outside the parish to adjoining parishes? A. Sir, I happen to know of one Senate district because the Senator who represents the 15th Ward with which I am often much concerned happens to also represent that area below the 15th Ward going, in effect, up river, even though it is hard to see from that map that it is up river. I know that particular [103] senatorial district crosses a parish line.

Q. So, it doesn't follow the ward lines? A. Well, yes, it does, because the only ward, if I recall correctly, that he represents in the City of New Orleans is the 15th Ward.

Q. Mr. Beer, without specific reference to a map, you live generally in this area? A. Come down a little more, a little more; right around in there.

Q. And is it true that four of the other six councilmen live in an area generally like this (indicating)? A. Well, you have got to draw that line down. I happen to live in the 17th Ward about a mile and five-eighths from the lake. I have not been to the homes of—well, I have been to the home of Councilman Moreau and I have been to the old home of Councilman Lambert. I cannot locate in my mind's eye the exact location of the other members of the council, although I know generally where they live.

Q. Well, if we drew a line straight across the map east and west, from your home east—— A. Okay, yes, sir.

Q. —would there be any councilman living in the City below you? A. Yes. I think Councilman Sapir lives in B. I mean, I know he lives in B. And your line, of course, passed above [104] B. I have never been to his home and I don't know where it is.

Q. But the rest of the City Councilmen, the present incumbent councilmen, live above the line? A. I don't know where Councilman Ciaccio's house is exactly, so I can't answer under oath that that line is exactly right. But I think your point is generally correct.

Q. Councilman Ciaccio lives out in this area; is that correct (indicating)? A. Yes, sir, in that general area. I don't know if it is quite above or below that imaginary line that you drew.

Q. If someone were to draw a line starting below your home east and create a councilmanic district, could that be done? A. Sir, I suppose anything can be done in terms of powers of some court. There is a suit right now existing in the U.S. District Court for the Eastern District of Louisiana calling upon that Court to appoint a special master to draw those lines.

Q. Would that in your opinion, as you testified a moment ago, be a conscious gerrymander? A. I don't—I'm sorry, but I don't exactly understand your question.

Q. I thought you indicated when you were being examined by Mr. Stoner that in your judgment it would be a calculated effort—it would have taken a calculated effort to put councilmen in the same district in view of the fact that they were already in their own districts. [105] A. Well, I see your point, and I have to answer you this way: I think if you decided that you were going to absolutely calculate, for some purpose, whatever it was, to try to contend to somebody that we were all in a certain area, you would start out doing just about what you said you would do.

Q. Would that be a viable reapportionment plan in your opinion, sir? A. Well, it would be completely inconsistent with every previous condition from the standpoint of any sort of stare decisis or any other basis of regularity that has existed in the City since it was founded in terms of political subdivisions.

Q. That is because the political subdivisions you are talking about are wards? A. Yes, sir.

Q. And they run generally—and I appreciate there are 17 of them and some of them go differently. A. Yes, sir.

Q. But generally north to south? A. You are correct.

Q. Are you a student of history, Mr. Beer? A. I would say midland.

Q. When the City of New Orleans was first set up, did it include all of the area now encompassed by the City? A. No, sir. The City grew up pretty much in that crest down there.

[106] Q. Right in here (indicating)? A. Well, I'd say yes, sir, right, and then kind of expanded from it. But it radiated, I guess you would say, and, of course, it had the traditional dividing line of Canal Street between what we call Vieux Carre or the French Quarter and the Garden District which is sometimes referred to as the American section as opposed to the French section.

Q. The City grew generally in this direction (indicating)? A. Well, it started—I would say it kind of started going up the river before it started going to the lake very much. It went—(Mr. Shurtliff indicating on exhibit)—yes, sir. You see, there was a little community up there in A which was known as Carrolltown. Yes, sir. But come on down some to the river, keep coming down. Right in there was the little community of Carrolltown.

Then the City eventually grew in that big crescent up to Carrolltown and became known as the Crescent City, and it is pretty much in that crescent that New Orleans had its, I would say, formative development, expanding all the while out to the lake as time passed.

Q. So, as it expanded in this direction generally, did they create new wards? A. Honestly, I don't know. I can only remember as a kid that there was the 17th Ward. So, we have had 17 wards as long as I can remember.

[107] Q. But the City did start out in this general area (indicating)? A. Well, and strangely enough, also over in Algiers there is an old section of Algiers which developed about the same time that New Orleans was developing on the other side of the river, but it also serves very close to the river.

Q. So, if we were to draw a line below your home east and create a councilmanic district, it would violate, in your judgment, the tradition of wards flowing this way because it would in effect cut the top of a number of them off. A. Well, I can't exactly—yes, I would say what you have said is essentially a fair statement.

Q. Would it violate any other considerations that should go into a redistricting plan? A. Well, it would violate what we—in other words, what was handed over when we were the City Council taking office was a districting which was on the basis of those traditional lines, and we are, I suppose, seeking to pass on, in terms of fulfilling our responsibilities, something that isn't violently emasculated or violently changed in terms of feeling that part of our responsibility, I believe, is to not do this violently but to do it consistent with the historic method which has been used.

Q. But why? Why do we need to follow that historic tradition? [108] A. Well, I think I am again only speaking for myself, sir, but I think we felt that among the other considerations was the one that we sould not—that the mandate that we had was not to make a violent change in the overall configuration of the districts.

Q. Where do you derive that mandate? A. Well, I would say on the basis of consistencies.

Q. Is it written? A. No, sir.

Q. You talked about a community of interest between the Algiers or Ward 15 area and across the river in the proposed District C; is that correct? A. Yes, sir.

Q. There is in your judgment a community of interest. That interest was the bridge? A. Well, I think it's a lot more than the bridge. I think it's an identification both in terms of the continuity of the configuration and in the overall desires and goals of the people in those areas.

What you have got to understand is that in terms of that at least is that quite the contrary was the situation existing in the situation where Algiers was a part of A. There was a violent disagreement between substantial groups of people who had as their one representative on the City Council me, and this was generated because of this bridge situation which you [109] have discussed and which Mr. Stoner has discussed.

Q. You indicated also that there was a similarity in the type of homes found in this area and this area (indicating)? A. No, you are over in D now.

Q. I'm sorry. Over in this area (indicating). A. Yes, sir.

Q. And the same type of people. A. Well, I feel like that's an oversimplification that I really don't think I should say under oath that there are those of us who would say that the people in Algiers represent a distinct breed all their own. By reason of the geographic location of Algiers, there has been a build-up of feeling over there that they are in a sort of cul-de-sac in terms of being identified with the rest of the City, and that has been a gnawing

but continually existent state of mind in terms of a lot of people in that district. I think they identify a good deal more with people in C than they do in uptown A.

Q. Why is that? A. Because they want a bridge and they don't care if it goes through uptown New Orleans because it will take the pressure off the bridge they have got, from people coming into New Orleans from across the river who live in Jefferson Parish below that boundary line of the 15th Ward.

The Witness: Your Honor, may I try to show you that? I think that might be helpful.

[110] Judge Robinson: Very well.

The Witness: (At map.) This area, if it please the Court, all down here is not New Orleans. That's Jefferson Parish. But it is a hugely growing bedroom area with maybe 300,000 people in it, and there is a tremendous pressure to get across, from there across the river into New Orleans because of the employment and whatnot.

But all of that whole sweep of pressure comes right on this one bridge which Judge Robinson asked about. It is the only bridge except for one way up river here. So, people in the 15th Ward say, "Look, we have got a bridge. It's adequate. If there could just be a bridge up here somewhere to take all the pressure off these people off of us on this bridge here and let us cross into New Orleans up in here somewhere."

So, they are very much in favor of a bridge being built up in this section here, all of these people are, to take the pressure off of this bridge.

But these people say, "Look, we are in a residential area. We are quite satisfied with the fact that we are in a satisfactory, stable neighborhood. We don't want a big thoroughfare cutting across the river through our stable neighborhood to hook up with some major highways that run above the City."

So, there's been a great antagonism between what is called uptown New Orelans and Algiers, and I have had the schizophrenic job of trying to represent both entities.

[111] Judge Waddy: I am trying to understand and follow the question of how the bridge looms so largely in the determination of the districts?

The Witness: Well, Your Honor, I think it probably is being a little bit overaccentuated here. I think it looms large in the pressures of trying to put it—of trying to put Algiers back in a district where at least people were not going to be antagonistic to each other.

Judge Waddy: How does that affect the issues that are before this Court in determining whether or not the plan which has been arrived at has the purpose or effect of denying or abridging the right to vote on account of race or color?

The Witness: I don't know, Your Honor, except I think——

Judge Waddy: We are spending much time on matters that are irrelevant; aren't we?

The Witness: I think perhaps only to show that C is trying to—that the way that the Council Research Staff designed District C in the new plan was to try to take that into account and be consistent with it and didn't calculate it in any other terms.

Judge Robinson: It is my understanding, Mr. Beer, from your testimony that the matter of further bridging or not bridging the Mississippi for the benefit of people in Algiers is a matter that is vested in some state authority. There is no [112] local authority with reference to it. Is that all correct?

The Witness: I think that's an accurate statement.

Judge Robinson: So there is nothing that the Council of the City of New Orleans can do. There is nothing that the electorate of the City of New Orleans can do about it; is that correct?

The Witness: Except, Your Honor, in terms of resistance to a selected site. In other words, there is some contention by those who say that the home rule Charter gives us certain rights; that the Council does indeed have to acquiesce in a site designation made perhaps by the Governor. So that there is like a veto, which, of course, I suppose would ultimately have to be tested in Court.

Judge Robinson: But that, I take it, is or is it in anywise dependent upon or connected with the makeup of the districts by which five of the seven members of the New Orleans Council are elected?

The Witness: Well, only, Your Honor, in the sense that a district councilman charged with the responsibility of doing his best for his constituency is going to have to be responsive to their desires as to the location of a bridge.

Judge Robinson: But he would not be acting as a councilman in this regard, as I understand.

The Witness: Yes, sir, he would.

Judge Robinson: He would?

[113] The Witness: Assuming the veto power——

Judge Robinson: Very well.

The Witness: —existing in the Council, if Your Honor please.

Judge Robinson: That power is in the Council now and not in the electorate.

The Witness: It is my own belief, Your Honor, that the home rule Charter would give us a basis for resisting a unilateral determination by the Governor that the bridge would be built at a particular spot.

Judge Robinson: Very well.

By Mr. Shurtliff:

Q. Has the Council passed resolutions in respect to the location of a prospective bridge? A. Yes, sir.

Q. When did they do that? A. We have done it at various times throughout the time that I have been in office, sir.

Q. Is there at the present time a proposed bridge, conditional bridge across the river? A.Well, sir, there are proposals, yes, that still exist in terms of different groups have different contentions as to where it should be.

Q. But the powers with the authority to locate a bridge have not settled on a location? [114] A. No, sir.

Q. So, the community of interest that you talk about tying Algiers to this across the river portion of proposed District C is basically the bridge; is that correct? A. I'd say so, among others.

Q. What others? A. The discussion that you and I just had about the fact that certain areas of Algiers are pretty much similar in terms of the residencies and whatnot that is a very substantial portion of C.

Q. Are they similar in ethnic background? A. I would say that there is a fairly substantial white majority in both areas of C, the back of Algiers and the lake portion of the City; yes, sir.

Q. Well, there are other areas of the City that are separated in districts or by wards that have communities of interest; are there not? A. Yes, right; that's perfectly true.

Q. For instance, wouldn't there be a community of interest joining this area together (indicating)? A. I would say that there would certainly be a community of interest in terms of the fact that the lake fronts the whole area that you have drawn your pointer across. There are very definite differentiations in the type of housing and whatnot as you sweep across that whole area and in terms of people who [115] occupy those houses.

Judge Robinson: Mr. Shurtliff——

Mr. Shurtliff: Yes, sir.

Judge Robinson: —particularly for the benefit of the Court Reporter, would it be convenient to take a brief recess at this point?

Judge Waddy: Do you have much more cross-examination?

Mr. Shurtliff: Twenty minutes, Your Honor.

Judge Robinson: Twenty minutes more?

Mr. Shurtliff: Yes, Your Honor.

Judge Robinson: The Court will stand in recess 10 minutes.

(Whereupon, a short recess was taken.)

Judge Robinson: Mr. Shurtliff, would you indulge me for just a moment on behalf of the Court?

Mr. Shurtliff: Certainly, Your Honor.

Judge Robinson: Mr. Beer, there has been considerable mention and testimony respecting the vertical nature of the lines which divide the five voting districts.

The Witness: Yes, sir.

Judge Robinson: It is our understanding from your testimony that the lines were in the shape pretty much either as or pretty much as indicated on the smaller map that is on the board over the largest map there; is that correct?

The Witness: That's exactly correct, Your Honor. [116] Those are the lines that we are operating under right now.

Judge Robinson: When was it that you became a member of the City Council?

The Witness: I took office, Your Honor, in May of 1970.

Judge Robinson: Oh, very well.

The Witness: We were elected—if Your Honor please, we were elected from those districts in 1969 and took office in 1970.

Judge Robinson: Very well. Are you in a position to give testimony as to how long the lines dividing the five districts have run in a vertical fashion, largely in a vertical fashion; that is, largely in the north-south direction?

The Witness: Yes, Your Honor.

Judge Robinson: And for how long?

The Witness: Since the City Charter was enacted insofar as districts are concerned and, I believe, since the incorporation of the City as far as the City is concerned.

Judge Robinson: All right.

Judge Waddy: Can you tell us when that was?

The Witness: Your Honor, I can't really. I think that the old Commission Council was a creature of some enactment around 1912, and even at that time the ward boundaries of the City were essentially as they are now.

Judge Robinson: Well, the ward boundaries of the City [117] were set up in the Act of 1912; were they not?

The Witness: Yes.

Judge Robinson: Were the district boundaries set up by the same enactment?

The Witness: No, Your Honor, because we didn't go to a district form of electing representatives to the council until the home rule Charter of 1952.

Judge Robinson: And that was the first time that these five districts had existence of any sort?

The Witness: That's correct, Your Honor. I may be off on that a year or two, but that's essentially the time frame.

Judge Robinson: Do you know why the district lines were drawn in the north-south direction; why they are vertical lines instead of the districts having some other kind of configuration?

The Witness: Yes, Your Honor. That was primarily to comply with ward lines. In other words, the effort obviously was to delineate districts to include certain specific wards, and since the wards were that way, the districts emanated that way. The genesis of it, Your Honor, would be in the configuration of the ward lines, and the effort to then make districts out of wards, taking 17 wards and putting them essentially in five districts.

Up until this redistricting, if Your Honor please, [118] there never was a district that didn't comply exactly with ward boundaries. This plan is the very first plan that has ever gone even outside the ward boundaries but still trying hard to follow the general configuration.

Judge Robinson: When you say "this plan," you mean the plan, the validity of which is now before the Court?

The Witness: Yes, Your Honor; yes, sir.

Judge Robinson: Were all of the wards now existent in New Orleans in being in 1912?

The Witness: Your Honor, I just don't know. I think that perhaps they were, but I can't answer that for sure. I can say, if it please the Court, that there has been, as

long as I can remember, 17 wards with essentially the same boundary lines.

Judge Robinson: Very well.

The Witness: If Your Honor please, inside those wards, precinct lines change all the time because of the growth of the voting area, and the pressure at the polls.

So that a lot of times Precinct 17 of the 14th Ward will end up maybe being Precinct 17, 17A, 17B and 17C because that precinct has expanded in terms of people. But the ward boundaries, if Your Honor Please, have essentially stayed the same.

Judge Robinson: Very well.

Judge Waddy: Mr. Beer——

[119] The Witness: Yes, sir.

Judge Waddy: I believe you testified that in drawing the boundaries for the new districts that you attempted to follow the general ward configurations and consistent with the historic methods that had been used. Am I correct in that?

The Witness: Your Honor, I think that the actual mechanics—it is important to point out that the actual mechanics of devising the plans were left to the Council Research Staff working generally under the mandate that Your Honor has described.

Judge Waddy: Then do you know whether or not these were the considerations, the attempt to follow the general configuration in a method consistent with the history?

The Witness: Your Honor, I think it wasn't probably couched that way. I think that the general thesis upon which it was approached was to not be any more inconsistent than had been with the changes that took place following the 1960 census which do what Your Honor has described.

Judge Waddy: Well, was any consideration given to the proposition as to whether the following of that procedure would have the effect of denying or abridging the right to vote on account of race or color?

The Witness: Your Honor, I would have to answer it as best I could, which would be that it was not calculated

in any respect either to aid or to abuse any voting group. [120] Judge Waddy: Then do I understand from that that you are saying that no consideration was given to whether it would have the effect of abridging or denying the right to vote on account of race or color?

The Witness: No, Your Honor, I can't say that. Of course, I can only answer for myself on that basis, but certainly speaking for myself, I did try to take into account the points that Your Honor has made and did not calculate to abridge voting rights.

If Your Honor please, New Orleans is a salt and pepper town in a lot of respects, and there isn't any—as was said, you almost would have to hop skip around one way or the other to achieve the kind of end that Your Honor is describing.

Judge Waddy: Now, one other thing. You have given to us in Paragraph 16 of the Complaint, which has been stipulated, population statistics that existed as of the time of the first plan that the Department of Justice turned down and for the plan that is now before the Court.

The Witness: I haven't seen the pleadings, Your Honor, but I am generally familiar with them.

Judge Waddy: Do you have any population statistics for the population under the plan that exists now or the present plan?

The Witness: Oh, yes, I am sure that Research Staff has that.

[121] Judge Waddy: You can give us some of those statistics?

Mr. Stoner: Yes, sir.

Judge Waddy: All right.

Judge Robinson: Mr. Shurtliff, you may proceed.

By Mr. Shurtliff:

Q. Was is 1971, Mr. Beer, that the issue of councilmanic redistricting first arose in New Orleans? A. Yes, sir. We were cognizant that the Charter—well, I suppose when we took office we knew as soon as the '70 census figures started

coming that we had the mandate from the Charter, and I think they came in in raw form sometime in the summer of '71.

Q. What took place at that time in reference to redistricting the councilmanic districts? A. Well, as I testified, those figures were subsequently reduced by the Council. They came to us in block by block, I mean city blocks. So, it became necessary to translate that into wards and districts in order to make the determination of whether we were over or under in terms of the total number of voters in our particular districts, and I think that that was accomplished by the late winter of—late in '71 or early '72 by the Council Research Staff at the direction of the President of the Council.

Q. Were those statistics available by race at that time? A. I think they were. I think they were available by—[122] yes, I think they were.

Q. Were registration statistics by race available at that time; do you know? A. I am sure they were. The registrar of voters has an information gathering service which I am sure includes an ability to respond to those inquiries, and I am sure that that information was available.

Q. After this use of the statistics was made, what did the Council do in reference to redistricting? A. Well, if I remember the order, the chronological order it tasked, the redistricting plan that you all call Plan 1, which I voted against, sometime shortly thereafter it passed the Council ordinance which permitted—which was the enabling legislation to let a proposal go to the people which would have increased the Council from seven to nine members, and it also passed an ordinance which let go to the people at the sametime a proposal to increase the Council to 11 members. Both of those ordinances were tested by certain groups in the City in the Civil District Court for the Parish of Orleans, and both of those ordinances were deemed inoperable by Judge Federoff.

Judge Waddy: I believe this was stipulated to.

The Witness: Yes, sir. Then after that we passed other ordinances which let go to the people the question of the nine or the 11 member plan, but the Mayor vetoed the nine member proposal.

[123] By Mr. Shurtliff:

Q. Was that ordinance in the form of an either/or to the voter? A. Sir, it was two separate ordinances. One ordinance passed the Council proposing the nine-member plan and another ordinance passed the Council proposing the 11-member plan, and the Mayor vetoed the nine-member ordinance. Councilman DiRosa, Councilman Moreau, Councilman Depuy voted to override the Mayor's veto but that took two-thirds vote. So, the only thing that went to the people was the proposal either 11 or the present Council of seven.

Q. But it was your desire that both proposals go to the people—— A. Yes.

Q. —at the same time; is that correct? A. Yes. That is obvious from my vote in both instances. I voted for the ordinance to permit the nine-member Council to go to the people. I voted for the ordinance to permit the 11-Councilmen ordinance to go to the people, and I voted to override the Mayor's veto when he vetoed the nine-member proposal.

Q. In your opinion, what would have happened had both of these proposals passed by the City Council gone to the people at the same time and both been supported by a majority of the voters in the City?

[124] Mr. Stoner: I object.

The Witness: That's conjecture.

Judge Robinson: What is the relevancy?

Mr. Shurtliff: The relevancy is to show the City Council was really not trying to promote an increase in the size of the City Council.

Judge Robinson: What is the basis of your objection, Mr. Stoner?

Mr. Stoner: I object. It is highly speculative for Mr. Beer to speculate as to what would happen in a general election when there are two issues presented to the electorate at the same time.

Judge Robinson: The question of purpose is involved in this litigation. The question of good faith is involved too. The question is addressed to the weight for the answer that he will give. I will overrule the objection.

Do you have the question, Mr. Beer?

The Witness: Yes, sir, I understand the question. If I recall, at the time the Council obtained a ruling from the City Attorney's Office with respect to the validity of that type of proposal from the standpoint of it being acted upon if indeed it went to the people in that form. If I recall correctly, the consensus was that was not an unsatisfactory manner to present it to the electorate.

To answer you specifically in terms of my own feeling, [125] it certainly was not a calculated or uncalculated intention to confuse the issue but to permit the voters to act on the issue or on the issues.

By Mr. Shurtliff:

Q. Which were? A. Which were whether to increase the Council to nine members or to 11 members or to leave it as it was.

Q. But the Mayor then vetoed the 11-member—— A. No, sir, the nine-member.

Q. The nine-member A. Yes, sir.

Q. Were there public hearings held where these ordinance were passed by the City Council? A. Yes, sir, they were held in accordance with the provisions of the Voting Rights Act of 1965. We were being pretty much advised by the City Attorney's Office with respect to the general applicability of the Voting Rights Act of 1965.

Q. Were public hearings held in reference to these ordinances to increase the size of the City Council. A. Yes.

Q. Were there proposals made at those hearings other than the 7/2 plan or a 9/2 plan? A. Yes. If I remember

correctly, there was a proposal for an 11-member plan that would have no at large members.

Q. Who made that proposal; do you recall, sir? [126] A. No, sir.

Q. More than one person? A. Well, I don't know that more than one person made it, but I know that it certainly had the support of more than one person. It may have been alluded to in terms of reference as far as putting it before the City Council by one person, but I know that there were several people who were in favor of it.

Incidentally, there were plans, I would say, submitted that included contentions with respect to a nine-member plan without any councilman at large also.

Q. Were these persons that spoke in favor of an 11-member single district plan black or white; do you recall? A. They were both. For example, there are many people from Algiers who are in favor of the 11-member plan because that would give Algiers a representative on the Council just from Algiers, I would say, is predominantly a white section.

Q. Was an ordinance in those terms framed and presented to the City Council in terms of putting to the people the question of an 11-member single district plan? A. Not that I recall. I think that the—I can't recall what the number was. I am certain that it was proposed, but I doubt that one was ever actually submitted by any member of the Council. The Chater, as you know, specifically provides for two councilmen at large.

[127] Q. But they were speaking in favor of a Charter amendment; were they not? A. Yes, sir, correct.

Q. An amendment or the Charter would be amended? A. That's correct.

Q. Two ordinances did go to the electorate to determine their wishes on changing the Charter; is that not correct? A. That is entirely correct.

Q. What at that time did you do in reference to redistricting along a 5/2 plan? A. Let me make sure I understand the chronology. This is after the voters rejected both of the Charter changes that you have asked me about?

Q. Well, just for purposes of clarification, is it not true that the first plan was prepared. The question of increasing the Council to 11 went to the people after that plan was prepared. A. Yes, sir.

Q. It was defeated. A. Yes.

Q. That plan was then submitted to the Attorney General? A. I'm not sure of that chronology. I just don't know about that. That's something I simply don't know the answer to.

Q. Then it was subseqeunt to the first plan being objected to by the Attorney General that the vote went to the [128] people the second time on increasing the size of the Council; is that not correct? A. It could be, Mr. Shurtliff. I don't know that. I just can't recall that chronology.

Q. Without reference to the question of increasing the size of the City Council but directing your attention to the 5/2 districting plan, the first plan—— A. Yes, sir.

Q. —how did the Council approach that? A. Well, again, I would be just giving you my own opinion, but I think that the Council at that time thought that there would be legislation passed by them and subsequently by the people increasing the size of the Council, and I think they felt that the plan that had been submitted which split Algiers was probably not going to be viable in the sense that the size of the Council would be increased and that we would in fact eventually elect either two councilmen at large and seven district councilmen or two councilmen at large and nine district councilmen.

Q. But in fact a 5/2 districting plan was put together and passed as a final ordinance; is that not correct? A. That is correct.

Q. And did you participate in deliberations concerning the preparation of that ordinance and that plan? A. Yes.

[129] Q. Where were those discussions or deliberations held? A. Well, I think they were held—there were some

discussions in the Council chamber and some discussions with members of the Council Research Staff.

Q. During your discussions in either place, did you give to the Council Research Staff guidelines as to what they should do in the preparation of the 5/2 districting plan? A. I can't give you the exact details of those discussions with the Council Research Staff. It's been about three years and I don't want to be inaccurate. I can only say that I expressed a lack of acquiescence in it or I expressed a dissatisfaction with the splitting of Algiers into three parts, but understood that at the same time there was an effort at that time to try to respond to the 118,000 figure, and it looked like some areas did have to be split.

Q. You recall no directions to the Council Research Staff setting forth guidelines that they should follow in the preparation of the plans? A. I can't recall that there was. I can't recall from my own point that I discussed it with them in any detail.

Q. Did you discuss the plan that ultimately became the first redistricting plan adopted with other mem' ers of the City Council—— A. I am sure——

Q. —and members of the Council Research Staff in the [130] offices of the Council Research Staff approximately two weeks before adoption of that ordinance? A. I can't tell you the last part of your question yes or no, but I can say that the first part of your question, except for the two-week period which I simply can't recall, the answer is yes.

Q. I am confused by your answer. A. I'm sorry.

Judge Robinson: Why not reframe your question more specifically.

By Mr. Shurtliff:

Q. Did you attend a meeting with other members of the City Council, members of the Council Research Staff, approximately two weeks before final passage of the first plan? A. I would have to answer yes except for the two-

week time frame which I have no recollection of in terms of when we discussed it and when it was enacted.

Q. Would you describe that meeting for us? A. I don't think that I can describe it except to say that there was a meeting among members of the Council and the Council Research Staff, and the Council Research Staff had, if I recall correctly, a lot of maps with pins in them representing the figures that had been obtained from the census.

Q. And this map, was it a large map? A. I think it was probably about the size of the big [131] map there.

Q. And was it a colored map? A. I can't recall, except that I do remember it had colored pins.

Q. More than one color? A. Yes.

Q. What did those pins represent? A. Black and white registration.

Q. Registration? A. Or population. I'm not sure. It may have been both. I rather imagine that it was both. There were myriad maps prepared during all of these different —I would say the Council Research Staff probably prepared a hundred different maps for one reason or another.

Q. Did you use that map at that time in that meeting? A. I don't exactly understand your question.

Q. Was the map used by persons at this meeting?

Mr. Stoner: I object to the question, Your Honor. There has been testimony that there were many, many maps in the Council Research Staff office at the time. I think counsel should identify which map he is talking about.

Judge Robinson: Do that, Mr. Shurtliff.

By Mr. Shurtliff:

Q. Was the map that had pins on it, different colored pins representing either or both registration or voting [132] statistics, used at that meeting? A. Yes, I feel sure it was.

Q. For what purpose was it used? A. As a reference.

Q. Reference to what? A. To population, to all those things that were material to the deliberations.

Q. Will you describe the deliberations? A. I can't describe them in any great detail.

Q. Were you working on plans? A. The Research Staff had prepared a number of plans, yes.

Q. Were you examining those plans? A. Yes. One of the things that came up, I remember, in this instance as well as in other instances, it became necessary to ask Mr. Payzant, for example, about precinct populations, because there was a necessity or an effort to try to adjust in terms of the precincts inside the 15th Ward.

Q. Did you ask for those statistics yourself? A. No, I don't think I did. I think that they were asked for—I don't recall that I asked for them.

Q. Were they provided? A. As far as I can remember, they were.

Q. In what form were they provided? Population? Registration? [133] A. I would have to say that as best I can recall they were provided in both forms, black, white registration and total population.

Q. And how long did this meeting last? A. I have no idea, nor can I say under oath that there was but one meeting.

Q. For what purpose were registration statistics by race obtained during that meeting? A. I think that they were obtained to provide information to council members as to what the voting strength was. It wasn't any matter of an illegitimate inquiry as far as I can recall.

Q. This was in reference to proposed plans and plans that were being considered? A. Yes.

Q. What purpose did the voter registration statistics by race perform? A. Well, I think they performed whatever purpose anyone who asked for them intended them to perform. It is obvious that as politicians we all are,—that was one of the bits of information that made differentiating effects on different people, I suppose. We have seven distinct individuals who are members of the council, and I could not possibly presume to say what exact impact that had on any of the members of the council. For me, if it was

produced, it was another bit of information to simply be considered in conjunction with the overall situation, [134] the overall map.

Judge Robinson: Was the registration date requested by the members of the Council or was it done simply as part of the work?

The Witness: Your Honor, I believe that routinely that was—that was information developed and made available to us by the Council Research Staff.

Judge Robinson: All right. It was presented to you for what purpose? Perhaps I am repeating one of Mr. Shurtliff's questions, but I am interested in getting your answer to it. What purpose did it serve?

The Witness: Your Honor, I would have to say—I couldn't presume to say what purpose it served for anyone but me, and in terms of my own reference points, it was not a matter of particular concern to me one way or the other.

Judge Robinson: Mr. Shurtliff.

By Mr. Shurtliff:

Q. Was the same data available when you considered this second plan, the plan that is the subject of this? A. I am sure it was; yes, sir.

Q. Going back to that meeting—— A. Yes, sir.

Q. —was a result of that meeting an ordinance that was passed and contained a redistricting plan? A. Yes, sir.

[135] Q. And that was the first plan? A. Yes, sir.

Q. You indicated a moment ago in response to one of my questions that you were seven politicians and that you were interested in these kinds of matters. What other matters or factors did you consider from a political point of view in redrawing the redistricting plan? A. Sir, I cannot possibly presume to answer for anyone other than myself. In terms of my own, the charge that I felt was incumbent upon me was to participate in the redistricting discussions and to evolve a plan that would be a conscionable, workable plan. I didn't think that the first one was. I voted against it.

Q. Why didn't you think the first one was? A. Because I felt that the splitting of Algiers was inconsistent with its best interests, and as a representative of that section I felt that I should vote as I got the light to see to do it in terms of that.

Q. Well, in your discussions with other members of the City Council on redistricting plans, have you ever discussed whether or not a plan should include two or more district incumbent councilmen in the same district? A. I don't think that I have specifically discussed that, although it would be fair to say that that has certainly been a subject matter of discussion. I haven't precipitated a dis-
[136] cussion vis-a-vis that particular point, but it certainly has been a subject matter that has been discussed.

Q. Why was it discussed? A. Just as a part of the overall considerations and deliberations in this matter. It certainly would not be my purpose to state to you under oath that seven members of the City Council weren't cognizant of and at least interested in the facts as they pertain to their residences in conjunction with the overall redistricting plan. That would be a presumption, a naivete, a lack of knowledge on my part. That would be absurd. As far as anybody in this room is concerned, certainly it was something that was in one sense or another, depending on the individual concerned, a matter for them to consider and react to.

Q. Would it be a similar exhibition of naivete to say that the Councilmen did not consider the racial composition of the constituents in the proposed districts? A. Now, there I would have to say that you are talking about a matter that is distinctly within the knowledge of the individual concerned, and I will tell you that in my own particular instance it was not a matter of grave or great concern to me one way or the other.

Judge Robinson: I understood the question to be as to whether it was talked about.

The Witness: Oh, I think it was talked about, Your
[137] Honor.

By Mr. Shurtliff:

Q. Do you recall discussions about that? A. Yes, in conjunction—again, I can't say that there were discussions about that only. It was certainly a portion of the general discussions; yes, sir.

Q. Would you describe that portion of the general discussion? A. I don't think that I can accurately do that. I think I would say that it took no more or less predominance or preeminence in my recollection of them than did many other things that were discussed or than did other things that were discussed.

Q. What other things were discussed? A. Neighborhood groupings, identification of longstanding neighborhood associations in terms of a district. There was considerable concern by various district councilmen about the rapport that had been established over a period of time with certain neighborhood and civic associations that had resulted in a working situation as far as improvements in various of the districts were concerned. There was a definite regard on the part of certain of us in terms of wanting not to break up that association if it was possible, not to break it up.

Judge Waddy: Was voter registration ever discussed?

The Witness: I'm sorry.

Judge Waddy: Was voter registration among the things
[138] ever discussed?

The Witness: I think that it certainly was discussed.

Judge Waddy: In what context?

The Witness: Judge, I can't actually say what context in terms of the oath that I have taken, except to say that it was discussed and it certainly took its place in the overall subject matter of discussion.

Judge Waddy: All right.

By Mr. Shurtliff:

Q. Was it a factor in the redistricting plan that resulted? A. I cannot say that it was any more or less a factor

than the other considerations. I certainly can't say that it wasn't, that it didn't play a part in the overall deliberations as I view them. But again I am only able, as you can, I am sure, understand, to speak as only one member of the Council.

Q. But you are a member of the Council. A. Yes, sir.

Q. This is in reference to the first plan. A. This is in reference to the matter generally, to the subject matter generally.

Q. So that the same type of considerations, the same factors that you have just described would apply to the second plan; is that correct? A. I think that's a fair statement.

[139] Judge Robinson: I didn't quite get your answer. What was it?

The Witness: I say, Your Honor, I think that was a fair statement.

Judge Robinson: Thank you.

By Mr. Shurtliff:

Q. Is the reason for that, whether or not a plan should place two incumbent City Councilmen in the same district, a political reason or—why is this a factor? A. Well, I would say what you said is correct, it is a political factor.

Q. In terms of what? A. In terms of two people already on the Council running against each other for the same seat after having run for that seat in a district that didn't include that other individual.

Q. Well, is that because of personal friendship or what? A. I can't answer that specifically, personal friendship, except to say that I think in this Council the considerations that have resulted in whatever action has been taken have not very often resulted because of personal friendships.

Q. Are incumbents stronger candidates than challengers? A. That depends. I would say again that's a pretty tough question to answer. An incumbent who has been chopped up pretty good in the press isn't necessarily as

strong as a new face who, though untested, is looking fresh and sleek and slick.

[140] Would a plan that did not place two or more incumbent councilmen in the same district have more chance of passage as a practical matter by the Council than a plan that did not? A. No, no, no; the answer to that question is no.

Q. Why is that? A. Well, the obvious political consideration that would exist in that situation.

Q. What other? A. It is unlikely that anybody, however well-motivated and however altruistic he is, is not going to at least take that into consideration. So, all other things being equal, I would say that the answer to that which I have given you is the answer that I would stay by.

Q. He is going to take it into consideration in terms of his political survival or in terms of his continuing friendship with his fellow councilman? A. In terms of his—I would say more in terms of his possible reelection.

Q. What other factors or considerations went into the drawing of the plan with the thought not to have a negative impact as to the possibility of reelection? A. Sir, I can't answer you for others. Again, I can only say to you as best—in an effort to answer you as accurately as I can, that it played its part in the overall consideration just as did all of the other things that we have [141] been discussing here today.

Q. "It" being what? A. The question of pitting one incumbent against another.

Q. You said that you didn't personally consider the racial voting statistics to a great length. Is that what you have testified? A. That's not exactly what I said but that's okay, I would stand by what you said.

Q. What did you say? A. Anyway, I don't think I expressed it quite that way, but I would say that what you have said is essentially accurate.

Q. I don't want to put words in your mouth. What did you say? A. I didn't say, but I felt that it was a matter of some indifference to me.

Q. Why was that? A. Because I felt when I took office that my term of office was four years and that was all that I was thinking about in terms of serving that term of office, and whatever happened with respect to me after that was a matter that I was generally ambivalent or indifferent about as far as that is concerned. Now, that is just speaking for myself.

Q. Do you know what the population of your present District A is? A. I certainly do.

[142] Q. What is that population? A. It's about 138,450.

Q. Do you know how many registered voters there are in that district? A. I really don't. I know it's in the neighborhood of perhaps fifty some odd, sixty some odd thousand.

Q. Of the hundred and third odd thousand population, what percentage is black; do you know, sir? A. No. I know generally. I would say about somewhere between around a third to 30 per cent.

Q. Do you know what the population of Proposed District A is? A. It has to be within a few ticks of 118,000.

Q. Do you know what the percentage of blacks is in that district? A. If I recall, it was essentially the same, maybe slightly higher.

Q. In the thirties? A. Yes, sir, if I recall.

Q. Do you recall what the percentage of black registered voters is in that Proposed District A? A. No, sir, I do not know.

Q. Would it be fair to say, Councilman Beer, that one of the reasons that you didn't, from a personal point of view, have to consider the racial makeup of your constituency and the number [143] of black and white or white registered voters was that, generally speaking, it didn't really have much impact on you? A. Well, I'll have to answer you this way: The district that is proposed in this plan is exactly identical in every single categoric instance to the district that was proposed for my district in the NAACP Plan down to the last precinct, and as far as I'm

concerned, what they proposed was satisfactory as far as the district is concerned, just as this proposal is.

Q. Satisfactory to whom? A. Satisfactory insofar as I am personally concerned.

Q. Were you concerned that they were satisfied with the plan? A. I was.

Q. NAACP. A. I still am, by doing my duty as an elected official of the City of New Orleans.

Q. You stated that your district is the same as that proposed by the NAACP? A. In their proposed plan.

Q. Is District B the same? A. As I recall, it is the same.

Q. Is District C the same? A. As I recall, it is not the same. It does not include Algiers. The NAACP Plan included Algiers in District D.

Q. Is District D the same? [144] No, because of what I have just said.

Q. District E? A. Essentially the same.

Mr. Shurtliff: I have no further questions, Your Honor.

Mr. Halpin: I just have a couple of questions.

Cross-Examination

By Mr. Halpin:

Q. Mr. Beer, is it your testimony that there was no effort whatsoever on the part of yourself and other concilmen to protect themselves in the way the district lines are drawn? A. No, of course not, except that I can't accept your terminology in terms of "protect themselves." There certainly was, as I have testified in response to Mr. Shurtliff's questions, a consideration of the factors that I have responded to in answer to his questions.

Q. You indicated that in drafting this plan one of the factors that you used was to follow the guidelines against discrimination, racial discrimination in voting, particularly as set forth in the Bussie case; is that correct? A. The wording of the Bussie was was discussed in a number of instances with the councilmen and with the Council Research Staff.

Q. Are you referring to the wording of the District Court opinion written by Judge West? [145] A. Yes, sir.

Q. You are? A. That's the only written opinion as I know of. The Fifth Circuit handed down a per curiam opinion, I think announced by Judge Wisdom, which I don't believe is reported.

Q. Without stating reasons? A. Yes, sir.

Q. Now, you are aware of the language in Judge West's opinion relative to the Louisiana Legislature where he said that these traditional historical boundaries were the reason that only two black legislators had ever been elected since the Civil War and that one in fact had succeeded the other, and that it was these historical boundaries which caused this racially discriminatory effect? A. No, sir, I am not familiar with that.

Q. You are not familiar with that language of the case? A. No, sir.

Q. Are you saying then that you didn't really very carefully look into the legal guidelines against racial discrimination in drafting this plan? A. Sir, I am not contending, first, that I drafted the plan and, secondly, I am not contending anything other than what I have said in response to the various questions. How you choose to paraphrase what I have said is a matter over which I have no control. But I can't answer it any better than I have [146] in terms of what went into the deliberations as far as I can honestly recall under oath at this time.

Q. Are you aware also that the Fifth Circuit decision which you are referring to in Bussie versus McKiethen, which changed the lines in four senate districts in New Orleans, had been appealed to the United States Supreme Court, sub nom Taylor versus McKiethen? A. I heard you state that to Judge Boyle in the discussion that was held in his chambers in connection with the suit that you filed in New Orleans. I didn't know it until then.

Q. You are not aware then that that case had been remanded to the Fifth Circuit for an explanation of its redrawing of those senate lines? A. I heard you expound

in some detail on that fact also, but that was the first that I knew about that.

Q. You were not aware of that sort of guideline when this plan was being developed? A. I didn't know the facts that you reported to Judge Boyle when you reported to him.

Q. Are you aware that the plan which Judge West drew, —rather, a special master appointed by Judge West drew and approved for the Louisiana legislature in fact did not follow these vertical ward lines but rather that the legislative districts were generally compact districts rather than vertical districts? [147] A. Sir, again I would have to answer that as honestly as I can this way: I was not aware of the details that you are now reciting again until I heard you recite them in virtually the same exact language to Judge Boyle in his chambers this past week.

Q. Now, you have indicated in your testimony that you can speak only for yourself relative to the absence or existence of a racially discriminatory motive in drawing the plan. Is that your testimony? A. Sir, I feel that I can only speak for myself in terms of what went on in my own mind and what were my motivations. I certainly am an observer of people just as you are and as any other person is, and I have opinions as to what I think may have been going on in other people's minds or what may have motivated them. But I certainly can't say under oath what they are.

Q. Is it not true that in the answer filed by you and the other councilmen, which was signed in proper person, in Jackson versus Council of the City of New Orleans, No. 73-1862, United States District Court, Eastern District of Louisiana, you stated in the course of these deliberations, the Council was obliged to reject certain self-serving plans proposed by Councilman Sapir which were in the firm opinion of all the councilmen unacceptable on their face as clear efforts to gerrymander Council District B, Councilman Sapir's district, into being a district containing a white voting mayority, [148] Councilman Sapir's purpose

being to give himself a white voting majority for the sole stated purpose of his so-called political survival? A. Yes, I signed that allegation and I believe that it is stated correctly.

Q. So there is some precedent for a City Councilman deliberately attempting to create a district with a particular racial composition? A. Yes. What that allegation says is essentially what took place in connection with the deliberations that took place regarding the so-called Moreau Plan.

Q. But you would still contend that the rest of the districts in the plan under question which happen to have a white voting majority were not that way because of any purpose or design on the part of the councilmen? A. I would say that with the exception of the allegations that were made in that particular paragraph that you referred to, that the other members of the Council expressed a definite indication of a willingness to try in every way that they could to achieve a viable, valid plan, even if in some instances it meant separating themselves from areas which had traditionally been in their district and which had in past history evolved a substantial support for them from that district.

Q. You can conceive, can you not, from your statement about Mr. Sapir that a white City Councilman in New Orleans may [149] well consider it to his political advantage to have a white majority of registered voters in his district? A. Yes.

Mr. Halpin: Thank you very much.

Judge Robinson: Redirect, Mr. Stoner?

Mr. Stoner: Yes, Your Honor.

Redirect Examination

By Mr. Stoner:

Q. Mr. Beer, have you ever heard in the deliberations of the City Council or among private conversations with members of the City Council the expression "Dirty Red"? A. Yes.

Q. What is it? A. I would have to answer you in terms of a certain amount of hearsay. I was not present when that —I was not invited to the meeting where that plan was, as I understand, proposed by Councilman Sapir.

Q. What is your understanding from the conversations you have had of the expression "Dirty Red"? A. I think that the expressions that I have heard, sir, have been "Crazy Red."

Q. All right, adopting the expression "Crazy Red," what is your understanding of that expression as it deals with deliberations in or out of formal sessions of the City Council of the City of New Orleans? [150] A. Sir, I would have to answer this way: I was not invited to and generally therefore did not participate in the meeting in the course of which this proposal was, as I understand it, put forth by Councilman Sapir, so that I simply have no basis for answering you in detail except from statements which have been made to me by others.

Q. Well, isn't it true, Mr. Beer, that that expression refers to——

Judge Robinson: Just a moment.

Mr. Cotton: Objection.

Judge Robinson: Don't you have another witness? You have put this question to Mr. Beer and he has explained his inability to answer. Don't you have another witness or witnesses who can later on give you this information?

Mr. Stoner: Yes.

Judge Robinson: Let's move onto the next question, please.

By Mr. Stoner:

Q. Mr. Beer, among the members of the City Council of New Orleans, is there great camaraderie among the members? A. No.

Q. Do you ever visit in the household of other members the Council? A. I have on one occasion in the household of Councilman Lambert. I have on one occasion prior to our election in 1970, [151] in the course of campaigning,

visited in the household of Councilman Moreau. I have on one occasion invited all the members of the Council and the Mayor and the Chief Administrative Officer to my home.

Q. How often do you meet in formal sessions of the City Council? A. We usually meet on Thursdays, every Thursday.

Q. And are these public meetings? A. Yes, sir.

Q. Are they open to television and radio—— A. Very much so.

Q. —recording of your Council meetings? A. They are a fish bowl.

Q. Are they essentially harmonious meetings or is there often great differences of opinion among the members of the Council? A. There are often great differences among members of the Council.

Q. Are there times when you disagree violently on issues that come before the City Council? A. That would be a correct statement.

Q. And are there many votes in the Council that are unanimous votes on controversial issues? A. No. On routine matters of the continuation of a right to have a land bridge, a bridge over a street or that kind [152] of thing, there is a working day business unanimity in terms of trying to not impede the progress of the business that comes before the Council on those kinds of issues. On controversial issues, there are very often strong differences of opinion, heated discussions among members of the Council, and at times, though they do a very excellent job, Councilman Moreau or Councilman DiRosa as President actually have some problems in maintaining order because of the heatedness of the discussion. Although I would say it is usually on an impersonal basis, although there have been times when unfortunately it has become on a personal basis as well.

Q. Now, with respect to, well, I should refer to it as Plan No. 1, which was the early 1972 plan which was rejected by the Department of Justice, I believe you stated

that you voted against that plan; is that correct? A. Yes, sir.

Q. And your principal reason for voting against that plan was that it divided Algiers into three councilmatic districts? A. Yes, that's correct.

Q. Now, with respect to the plan which is before the Court, Plan No. 2, Exhibit 3, did you vote for that plan? A. I did.

Q. Do you know what the vote for that plan was? A. It was six to one.

Q. And do you know who was the dissenting——

[153] Judge Robinson: That's all stipulated, isn't it, Mr. Stoner? I thought it was.

Mr. Stoner: It might be, Your Honor. I didn't know whether or not the councilman who voted against the plan——

Judge Robinson: Well, I know.

Mr. Stoner: I didn't know that fact was stipulated.

Judge Robinson: I know you set it up in your Complaint or in your memorandum because I read it. I don't know whether it is embraced within the stipulation or not. How deeply are you going into it?

Mr. Stoner: I just wanted merely to ask him if he knows which councilman voted against the plan.

Judge Robinson: Would you answer that question?

The Witness: Yes. Councilman Sapir.

Judge Waddy: That's in the stipulation.

Mr. Stoner: I have no further questions.

Judge Robinson: Is there anything further?

Mr. Shurtliff: Very briefly, Your Honor.

Judge Robinson: All right, Mr. Shurtliff.

Recross-Examination

By Mr. Shurtliff:

Q. Councilman Beer, did you have a councilmanic meeting last Thursday? A. Yes, sir.

Q. Did you have strong differences of opinion on any of

[154] the subjects discussed at that meeting? A. Yes, sir.

Q. Was one of those items of discussion that evoked strong difference of opinion the question of the residency requirement for City employees? A. No. The thing that I was thinking of was the zoning matter. But there was certainly—and there was some discussion on that. There was certainly at that time a very strong discussion about whether or not the members of the police department should—and fire department—should be required to live in the Parish of Orleans, in the City of New Orleans, and there was a—the only vote that was taken on the matter, as I recall, was a vote as to whether or not it should or should not be continued. That was the only thing that went to a vote that day. There was a vote on that, and if I remember correctly, Councilman Moreau and I voted against the continuance and the other members of the Council voted to continue until another time. But that was the only vote that was taken.

Q. Is it your testimony that that matter only went to City employees and firemen or did it go to the whole of the City employees? A. You are right. It concerned them all. But the only people who were there voicing any strenuous position on it one way or the other were the representatives of the fire and police [155] departments.

Q. And were any of those persons black? A. I honestly—I remember one of the very outspoken proponents of the proposal was Mr. Carter.

Q. He was the proponent for which side of the issue? A. On the side of the issue contending that it should be restricted to residents of Orleans Parish.

Q. On what side of the issue were the representatives of the police and fire departments? A. Well, there were a lot of women there who were wives of firemen and police officers who were obviously there in favor of letting the people come to the fire and police departments from outside the parish. I did not at that time hear, though there were some of them present, any of the senior police officers

of the City, and I do not know what their specific position was on the matter.

Q. Were there any persons there that spoke in favor of doing away with the residency requirement, black? A. I cannot recall, but I think that there probably were not. I think that—in fact, the contention was made by Mr. Carter to do away with the requirement was unacceptable to the black people that he stated he was speaking in behalf of, although he does in fact hold employment with the City of New Orleans, which is color blind.

Q. What position does he hold? [156] A. I don't know exactly what he is. I know it is a rather well-paying job because I remember some reference to his salary by someone who was discussing the matter after he spoke.

Q. Was this debate in reference to a resolution offered by President—Councilman DiRosa? A. If I remember correctly, sir, it took its place on the agenda by motion with Councilman DiRosa's name as the leading proponent or author.

Q. Councilman DiRosa is an at large councilman; is he not? A. That is correct.

Q. Did you hear during the discussion of that resolution Councilman Moreau state that he would introduce legislation in an ordinance form doing away with the residency requirement? A. If I recall, there was some statement generally to that effect. I can't say that it was couched in exactly those terms, but I think you have stated it as accurately as I recall it.

Q. Is Councilman Moreau an at large councilman? A. Yes, sir.

Q. Did any councilman speak in opposition to the removal of the residency requirement? A. I think that both Councilmen Ciaccio and I were interested in hearing some discussion about it from an overall standpoint, but I don't remember any—I honestly can't tell [157] you the details of—it is just one of a very substantial number of matters that came before us that doesn't single itself out so that I can honestly report to you the details of my recollection of it.

Q. Do you also recall at that Council meeting of last Thursday a discussion on a street matter? A. I remember towards the end of the meeting some discussion with respect to a——

Mr. Stoner: Your Honor, I am going to object to this——

Judge Robinson: What is the purpose of it?

Mr. Stoner: —the continuation of this further line of testimony. I have been very liberal on allowing him to get into this, but I don't understand what this is, and I might say——

Judge Robinson: Just a moment. Let him make his proffer.

What is it, Mr. Shurtliff?

Mr. Shurtliff: One of the contentions is that the black vote is diluted. One of the reasons for that dilution is the unresponsiveness of the City Council to the needs and desires of black persons in their City.

Judge Robinson: All right.

Mr. Stoner?

Mr. Stoner: Well, I think this is irrelevant in that [158] the issue arose because both Mr. Shurtliff and I apparently were in New Orleans last week in connection with the depositions, and the investigation——

Judge Robinson: I think it is within the issues of the case, but we may limit you on your probe. For the time being, you may continue. The objection is overruled.

By Mr. Shurtliff:

Q. Was there a discussion on a street matter, sir? A. Sir, as I recall, there was a discussion which had as its genesis a question by Councilman Lambert to a representative of the Department of Streets with respect to the asphalting of certain streets and whether or not that asphalt should go from curb to curb or on the street line, and I can't remember the exact details of that either.

Q. Was Councilman Lambert offering a resolution or a proposed ordinance? A. I think we had gotten down to the point where it would—I remember when you came into

the council chamber and I remember it probably being late enough on the agenda so that it probably would have been in a resolution and not in an ordinance. I think we were down to resolutions at that point.

Q. While he was speaking to that resolution, do you recall Councilman Lambert saying that the worst streets in the City are in the poor neighborhoods? A. I remember him making some reference to it, and I [159] think at the same time, if I recall correctly, he said black and white. Now, that is my recollection, when he put the question to the Street Department with respect to the problem of this asphalt program.

Q. Would the passage of Councilman Lambert's resolution have resulted in the expenditure of additional moneys by the City? A. Well, I have got to answer you this way: I don't recall that—I don't think that a resolution—just as a practical matter, a resolution carries with it no actual implementation. That's done by ordinance or by motion and order in our Council proceedings. I will say that the tremendous bulk of paving in the City of New Orleans during the entire time that I have been on the Council has been almost, well, certainly predominantly in black areas and probably almost exclusively.

Q. In black areas? A. Yes, sir.

Q. Is there a reason for that? A. One of the reasons has been the substantial use of Federal programs, and the other has been a joint City meeting of those or matching of those Federal funds in certain target areas. There is no doubt about the fact that there are areas in New Orleans which are black which are in greater need of improvement just as there are white areas. But it certainly is not inconsistent to say that there are areas throughout the City [160] black and white, that need paving. We need, I would say, about $300 million of capital improvements in that respect.

Q. Do you recall what the vote was on Councilman Lambert's resolution? A. I recall that it failed. I think the reason, if I may say, is a technical one in the sense

it was obviously one of those things that needed to be discussed further with the Street Department so that some action can be taken more consistent with the technical problems that existed in that particular matter.

Mr. Shurtliff: Thank you, Mr. Beer.

Judge Robinson: Gentlemen, are you all finished with Mr. Beer?

Mr. Beer, I have just a couple of questions about two groups——

The Witness: Yes, Your Honor.

Judge Robinson: —lending, as I understand, assistance to the Council, certainly with reference to the second redistricting plan, the one that is before the Court now, and perhaps also with reference to the first.

The Witness: Yes, sir.

Judge Robinson: There is mentioned in the complaint an entity called the Council Research Department.

The Witness: Yes, sir.

Judge Robinson: Would you tell me what that is.

[161] The Witness: Yes, I will try to, Your Honor.

Judge Robinson: All right.

The Witness: The Council Research Department is headed by a Mr. Jim Payzant who carries the title of Director of the Council Research Staff, and under his direction, Your Honor, are a group of, I would say perhaps eight or so, individuals who have varying duties.

Judge Robinson: Are these City employees?

The Witness: Yes, Your Honor, they are Civil Service employees all, and a substantial number of them are lettered in the sense that they are college graduates and do work as, I would say, legislative research analysts in terms of providing members of the Council with information, drafting ordinances, resolutions, et cetera, at the various directions of members of the Council. They are responsible to all members of the Council, but their daily duties are pretty much set out by the Director, Mr. Payzant.

Judge Robinson: Very well. Am I correct in my understanding that the Council Research Department was given

the responsibility and indeed it performed the responsibility of formulating the redistricting plan that is now before the Court?

The Witness: Your Honor——

Judge Robinson: I mean, the plan that became the one that is before the Court.

The Witness: Yes, sir, Your Honor. I would say that [162] the answer to that is yes, this was at the direction of and subsequently that ordinance was introduced by Councilman Moreau who was, I think, President of the Council when the original direction was given.

Judge Robinson: Now, am I correct also in my understanding that the Council, when it adopted this plan, adopted the plan just as it was submitted to the Council by the Council Research Study?

The Witness: No, Your Honor, I don't think that is entirely correct. I think that there was some rather minor but nevertheless some changes in it. I don't think that they—it would certainly be fair in response to Your Honor's question to say generally speaking that was correct, but I believe that there was some minor adjustments in terms of the actual numbers. The numbers weren't quite right in terms of the 118,000. There were some minor precinct line adjustments.

Judge Robinson: Anything other than that that you can recall?

The Witness: No, Your Honor. I would say essentially it passed as Your Honor stated.

Judge Robinson: Now, Mr. Beer, mention has also been made of an organization described as an independent nonpolitical research organization known as the Bureau of Governmental Research. Can you tell me about that?

The Witness: Yes, Your Honor. I served at one time [163] as a member of the board and as a member of the Executive Committee and as an officer of that agency but resigned before I ran for public office.

The Bureau of Governmental Research is a non-profit business and general public supported group which concerns itself with matters of importance to the municipal area or to the metropolitan area of New Orleans, and it has been, I think, chartered as a non-profit corporation for perhaps 25 years.

Judge Robinson: Is my understanding correct that the Bureau of Governmental Research was lending assistance to the Council Research Department in the formulation of this plan?

The Witness: Your Honor, the Bureau maintains a staff of its own. It has an Executive Director who is a paid employee, and he has a staff. If I recall correctly, there were, as there have been on other city issues, submissions by the Bureau of Governmental Research to the Council and to the Council Research Staff embodying suggestions on their part.

Judge Robinson: Do you know just precisely what role, if any, the Bureau of Governmental Research played by and through the Council Research Department insofar as the fashioning of the redistricting plan before the Court is concerned?

The Witness: Your Honor, I don't think I could say that I know the part in the sense that I was not privy to, say, the staff work between the two agencies; that is, the Director of the Bureau—the paid director of the Bureau of Governmental [164] Research and the Director of the Council Research Staff. I know how they rapport. But I was not specifically privy to the discussions they may have had.

Judge Robinson: Very well. Is there any black representation, Mr. Beer, on the Council in the Council Research Department, any blacks at all?

The Witness: I believe so, Your Honor. I am not sure of the number of employees.

Judge Robinson: Can you tell us how many?

The Witness: Your Honor,——

Judge Robinson: You can give an estimate. I understand you have said you don't know exactly.

The Witness: I would have to guess, Your Honor. There are probably two or three——

Judge Robinson: All right.

The Witness: —I think, city-wide.

Judge Robinson: Of what total number?

The Witness: Out of perhaps seven or eight.

Judge Robinson: Now, tell me about the Bureau of Governmental Research. Is there any black representation there?

The Witness: Your Honor, I can't answer that as of now. At the time I served on the board there were.

Judge Robinson: My final question, Mr. Beer, is this: You made reference to maps of New Orleans——

The Witness: Yes, sir.

[165] Judge Robinson: —containing various colored pins——

The Witness: Yes, sir.

Judge Robinson: —some of which did represent or you thought may have represented population statistics and others which you thought did or may have represented voter registration statistics.

The Witness: Your Honor, I don't have any doubt about it. I would not want the Court to think that I have doubt about it. I can't recall in which instance one was used and in which instance another was used. But there is no doubt in my mind but that those factors were represented by the pins.

Judge Robinson: Thank you very much. Now, these maps were presented to the Council by, was it, the Council Research Department?

The Witness: Yes, sir. And I think, Your Honor, that the Council Research people may have responded to various other inquiries that would have evolved various other responses. In other words, I can't recall but I rather imagine that over the time span of these discussions, there were

other types of mathematical data that were requested by different members of the Council.

Judge Robinson: Very well, Mr. Beer.

(Whereupon, the Court confers.)

Judge Robinson: Gentlemen, I suppose this finishes [166] the testimony of Mr. Beer. May he be excused or as a party do you expect him to remain through this hearing?

The Witness: Your Honor, I have some time problems. It may be that tomorrow——

Judge Robinson: It is quite all right, so long as Mr. Beer is excused.

Mr. Stoner: From the plaintiffs' standpoint, yes, sir.

Mr. Shurtliff: We have no objection.

Mr. Halpin: No objection.

Judge Robinson: You are free to leave at any time, Mr. Beer. Thank you very much.

Gentlemen, the Court had planed to adjourn at five this afternoon. We can continue until then. I don't know whether your next witness, however, Mr. Stoner, is a long witness or a short witness.

Mr. Stoner: He would be a long witness.

Judge Robinson: Would there be any advantage to be gained by starting with the witness at this time or would you prefer that we take the adjournment now and resume at 10:00 o'clock tomorrow morning?

Mr. Stoner: Well, his testimony will be long. He is an important witness. He is the Director of the Planning Staff and it would probably——

Judge Robinson: Had I known or remembered I could [167] have saved a few questions of Mr. Beer.

Mr. Stoner: I believe in 10 minutes we could get very little, perhaps just his introduction.

Judge Waddy: I would like to remind counsel that according to their representations to the Court at the beginning that this case would be concluded in two days and that the witnesses would be relatively short, along with the fact

that this Court has alloted only two days for the hearing. If counsel will keep that in mind for tomorrow.

Judge Robinson: Gentlemen, isn't it obvious at this point that the presentation of this case cannot possibly be completed on tomorrow? I have put that question to you. That's the way it seems to me.

Mr. Shurtliff: I would say that it appears that way to me, Your Honor.

Judge Robinson: Mr. Stoner?

Mr. Stoner: I must admit the testimony of Mr. Beer, I thought we would have concluded that in about an hour.

Judge Robinson: Very well. Did you have anything you would like to say about this, Mr. Halpin?

Mr. Halpin: It is obvious that it is going longer.

Judge Robinson: Now, the next question I would like to put to counsel—and you understand the purpose of putting these questions is not by way of complaint by the Court. This is an important case and we recognize that importance and we [168] recognize and respect the efforts counsel made today to expedite the case. But just owing to the nature of the case, this is going to be a long trial. Wouldn't you gentlemen concur in that estimate?

And the reason that I am raising the question at this time, and the reason for Judge Waddy's earlier question, is that the Court does have a problem, as I indicated to you earlier today, with the case not being completed on tomorrow as to when it will be able to resume this trial and to carve out enough time to enable us, the next time we assemble for the purpose of this trial, to be able to finish it.

Now, I don't know how you gentlemen feel, but the thought had been running through my mind that we would continue until the end of the day on tomorrow, and unless something happened to upset the view that I have of the case here now, we would resume—we had better figure on having one week to get this trial completed.

Mr. Stoner?

Mr. Stoner: I might say that Mr. Treese, my partner and I, had discussed the ways of expediting the testimony of our witnesses, and we had felt that the testimony of Mr. Payzant, the Director of the Council Research Staff, can be narrowed, and I would not think that anything close to that amount of time would be required.

Judge Robinson: Well, you have how many more witnesses?

[169] Mr. Stoner: We had three other witnesses. Although——

Judge Waddy: Your estimate was that you had five witnesses.

Mr. Stoner: Testimony that did develop here today may necessitate the calling of one of the other councilmen.

Judge Waddy: You may have, in other words, a maximum of four more witnesses.

Mr. Stoner: That would be our thinking. There is another witness from the Planning Staff who is here specifically at the request of the Government. We did not intend to offer him because he had very limited mechanical aspects of devising the plan.

Judge Robinson: All right. And Mr. Shurtliff, let's go back to what you said this morning. You have approximately the same number of witnesses for the defendants; is that correct?

Mr. Shurtliff: We do, Your Honor. There is no reason why you should have faith in me as a prognosticator——

Judge Robinson: I didn't hear you.

Mr. Shurtliff: There is no reason why you should have faith in me as a prognosticator, but I would seriously believe that our witnesses would be considerably shorter in duration than was Mr. Beer today. I would join with Mr. Stoner in that I really don't believe it would take us another week; [170] possibly tomorrow and two more days, at the rate we seem to be going.

Judge Waddy: We also have to consider the facts, Mr. Shurtliff, that Mr. Stoner might want to cross-examine

your witnesses as long as you have cross-examined his. So that we cannot overlook that situation.

Judge Robinson: Gentlemen, we want to give the case the consideration it is due, and it seems to me we will just have to be realistic in terms of what the time demands of this litigation may be.

Mr. Halpin, you have, I seem to recall from this morning, one witness?

Mr. Halpin: I indicated only one, and it is possible as the case evolves, it won't even be necessary to call that one. So, we shouldn't count on us putting on anyone, you know, for any length of time.

Judge Robinson: Well, the Court, as I have said before, will fulfill its commitment, will go through tomorrow, which was the amount of time counsel thought that they would need and which the Court arranged to give. Beyond that, as I have indicated, we have a terrible problem with reference to reassembling to give this case a substantial amount of time for the resumption of the presentation of the evidence.

Perhaps a determination can be made better at some point on tomorrow as to what the time demands would be. [171] Obviously, the more additional time the trial will take, the greater the Court's problem is in terms of getting back to this for purposes of an early completion.

The Court feels that it will need a transcript of the testimony given during these proceedings, and I dare say that counsel have the same feeling. Is that correct? It might be well for you gentlemen to make your arrangements with the Court Reporter as soon as may be convenient.

Is there anything else that can be profitably undertaken at this point?

If not, Mr. Marshal, the Court will stand in recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:58 o'clock p. m., hearing in the above-entitled matter was adjourned to reconvene at 10:00 o'clock a. m., Friday, August 9, 1973.)

[172] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1495-73

PETER H. BEER, ET AL., *Plaintiffs,*

vs.

UNITED STATES OF AMERICA, ET AL., *Defendants.*

Friday, August 10, 1973
Washington, D.C.

Trial in the above-entitled matter was resumed at 10:00 a.m. before a 3-Judge Panel, consisting of THE HONORABLE SPOTTSWOOD W. ROBINSON, United States Court of Appeals. Presiding, THE HONORABLE HOWARD F. CORCORAN, United States District Judge; THE HONORABLE JOSEPH C. WADDY, United States District Judge.

Appearances:

On behalf of the plaintiffs:

JAMES R. STONER, Esquire
JAMES R. TREESE, Esquire
BLAKE C. ARATA, Esquire
EARNEST L. SALATICH, Esquire

On behalf of the defendants:
M. KARL SHURTLIFF, Esquire
WALTER KORMAN, Esquire
NATHANIEL FRIENDS, Esquire

On behalf of the intervenors:

STANLEY A. HALPIN, Esquire
CHARLES E. WILLIAMS, III, Esquire
CHARLES E. COTTON, Esquire.

* * * * * * * * * *

[175] PROCEEDINGS

(This three-Judge Court convened at 10:00 a.m.)

Deputy Clerk: Civil Action 1495-73, the case of Peter H. Beer, et al versus United States of America, et al; Mr. Stoner, Mr. Treese, Mr. Arata, Mr. Salatich for the plaintiffs; Mr. Shurtliff, Mr. Gorman, Mr. Friends for the defendants; Mr. Halpin, Mr. Williams, and Mr. Cotton for the intervenors.

Judge Robinson: Are counsel ready to resume?

Mr. Stoner: Ready, Your Honor.

Judge Robinson: You may call your next witness.

Mr. Stoner: Plaintiffs will call as our next witness, Mr. James Pezant, and Mr. Treese will do the questioning.

Judge Robinson: Very well.

Whereupon,

James N. Pezant

took the stand, and being duly sworn, was examined and testified as follows:

Mr. Treese: May it please the Court——

Judge Robinson: Mr. Treese.

Direct Examination

By Mr. Treese:

Q. Sir, would you please tell us your name and residence? [176] A. My name is James Pezant (spelling out) P-e-z-a-n-t. I reside at 4727 Sierra Madre Drive (spelling out) S-i-e-r-r-a M-a-d-r-e D-r-i-v-e, New Orleans, 70127.

Q. What is your occupation, sir? A. I am the City Council Staff Director of the New Orleans City Council.

Q. I wonder if you could describe that position for us? A. Yes sir, I am the executive officer of the City Council and I head a research staff that studies fiscal, legislative, and administrative matters, or for that matter, any of the official business for the city government. I prepare reports, research activities of the city government and quite often prepare legislation in the form of ordinances, motions, resolutions.

Q. Now Mr. Pezant, you have used the pronoun "I," does that also include your staff? A. Yes, sir.

Q. At your direction? A. Under my direction, yes sir.

Q. I see. How long have you held this position? A. I have held the position of Director since January of 1961.

Q. Would you tell the Court please, what your educational achievements have been? [177] A. I am a graduate of Tulane University in 1951; I have a masters degree in political science from Louisiana State University in New Orleans, and at present I am a candidate for a Doctorate of Philosophy in Political Science at Louisiana State University in New Orleans.

Q. How many members do you have on your staff, Mr. Pezant? A. Sir, I have an entire staff of about eighteen employees. The research staff consists of five other professional employees besides myself and three clerical employees.

Q. Would you describe the relationship of your position and your staff at the City Council of the City of New Orleans? A. Well sir, our staff is what we call a career staff in city government. We are all appointed through the City Civil Service System—and our working relationship, did you say?

Q. Yes. A. The members of the City Council, sometimes individually, sometimes collectively, give us various assignments to prepare legislation, to study that legislation before it gets prepared, to prepare resolutions, motions, to study some activities of city government, and to present information. It's a tremendous process of giving seven members of the City Council adequate information upon which they will take some [178] future course of action, either legislatively or otherwise.

Q. Now in the conduct of your duties, do you perform in any way for the Mayor of the City of New Orleans? A. No, no sir, I have no responsibilities to the Mayor of the City of New Orleans.

Q. You and your staff perform solely for the Council? A. Yes.

Q. Are you, or your staff, or both members of the Civil Service of the City of New Orleans? A. Yes sir, every member of my staff is recruited and appointed through the City Civil Service System.

Q. All right. Who administers this Civil Service System in the City of New Orleans? A. There is a commission which is established by constitutional law, state constitutional law that administers a three-member commission that has a staff, a civil service staff, that administers the laws and procedures of the Civil Service System.

Judge Waddy: Are you appointed under the System, or do you take examinations in a competitive fashion for these positions?

Witness: Every member takes a competitive examination. I have taken both the written and oral examinations by board and the City Council got a list back in 1961 of the names of the persons, the persons in the order that they [179] finished, and they have the option of selecting one of the top three names, and I was appointed in that manner.

By Mr. Treese:

Q. Is that comparable to the way other members of your staff are selected? A. Yes sir, it's called the "Choice of Three." On any civil service position under that law, the appointing authority has the option of appointing one of the top three persons who are willing and able to accept employment.

Q. Now Mr. Pezant, does your office in any way deal with constituent problems in the City of New Orleans? A. Yes sir, we deal with a lot of constituents.

Q. When there are inquiries or complaints, or any form of direction to a member of the City Council from a constituent, is it then passed on to your staff? A. Yes sir. I don't know if a hundred precent of constituent problems are passed on, but literally scores of constituents are referred to my office by various councilmen to assist them

in problems that they have with various agencies of government, not limited to city government.

For example, a lot of citizens have problems dealing with the paperwork and the bureaucratic procedures related to the State Welfare Department, to the City Welfare Department, with respect to other agencies of city government, and we assist them with the understanding of the law, how to [180] proceed; we write letters on their behalf asking that they be given full consideration, etcetera.

Q. In the course of your activities within your staff and your duties as a Director, do you have occasion to seek legal advice from time to time? A. To seek legal advice from the City Council?

Q. From the City Attorney's Office? A. Yes sir, quite frequently.

Q. All right. Now did there come a time, Mr. Pezant, when you were called upon to involve you and your staff in the redistricting problems of the City of New Orleans? A. Yes sir.

Q. When was that? A. To the best of my memory, sir, in late 1970, or early 1971.

Q. Would you tell the Court please, how did that originate, how did you get the first inquiry about this subject? A. Well, in late 1970, or early 1971, Councilman Moreau asked my staff—it could have been by memorandum, it could have been verbally, I am not certain—asked our staff to start doing the necessary work to assist the City Council in its responsibility to redistrict the city, the five City Council districts, in accordance with the requirements of the New Orleans City Charter.

[181] We undertook to obtain the necessary information from the 1970 Decennial Census. We spent many, many weeks transcribing and de-coding—I guess you could call it—the information as it was sent down from the Bureau of Census.

Q. Who were the persons primarily responsible for that original legwork, that business of de-coding as you describe

it? A. Well sir, in early '71, I assigned to Mr. James Brannock who was then under the employ of my office, the responsibility for getting this information and preparing conceptual plans based on this information for the redistricting efforts. However, we did not receive what, I believe, are commonly referred to as the third-count tapes.

Judge Robinson: The what?

Witness: The third-count tapes of the Bureau of Census.

Judge Robinson: What are they?

Witness: The third-count tapes, Your Honor, gave us the information of the population of the City of New Orleans on a block-by-block basis, with a few exceptions, in order that we could correlate the population of the voting precincts of the City of New Orleans.

The first-round tapes which were received earlier only gave the popualtion of the city wards, these very large units, and that was not—we could not redistrict, [182] or we could not correlate that information with the voting precincts, or with small units, or with small neighborhood units. In other words, the first-count tape was a count in a very large form of the city population, and the third-count tapes, to the best of my knowledge, arrived in my office on either September or October 1971.

By Mr. Treese:

Q. Are you telling the Court that the third-count tapes were the final bits of information to be received from the Census Bureau in order for you to have all the information you needed to begin your project? A. Yes sir. I advised the President of the Council in 1971, Mr. Di Rosa, was President at that time, that we should seek a legal determination from the City Attorney's Office as to when the information was available to us in the manner in which it could be used for redistricting the city.

The reason for my advising that inquiry was that the City Charter of New Orleans required the City Council to redistrict itself after each Decennial Census within six months of receiving the necessary information from the

Bureau of Census. This was an important legal requirement.

Q. So at that point when you received the third—what do you call it, the third—— A. Third-count tapes.

Q. —the third-count tapes, you and your staff [183] proceeded——

Judge Waddy: Are you saying count?

Witness: Yes sir (spelling out) c-o-u-n-t, third-count.

Judge Waddy: All right.

By Mr. Treese:

Q. —you and your staff proceeded to draw up these conceptual plans, is that correct? A. We had drawn up conceptual plans prior to that, Mr. Treese——

Q. All right. A. —but those plans generally outlined what we thought were concepts of how the city could be redistricted based upon a further refinement of the information when it came in third-count tapes.

Q. What factors did you have in mind when you were arriving at these conceptual plans? A. The total population which is a requirement of the City Charter; I believe the City Charter states that the five districts should be as nearly equal as possible in population. We also took into consideration the natural boundaries of the City of New Orleans and historic boundaries of the City of New Orleans, and we also were mindful of the fact—we received some instructions from the City Attorney's Office, Mr. Earnest Salatich conveyed those to me—he digested the [184] regulations of—I don't know whether I should call them regulations—he digested some information from the U.S. Attorney General's Office, stating what they expected in the redistricting plan. And we also—In that plan, we also were mindful of the fact that in any redistricting plan there must not be an effort to dilute the voting strength, I believe it is, of minorities or black groups.

Q. Now did these conceptual plans that were developed out of the energies of you and your staff take any physical form? Did you have maps? A. Yes sir, we had about

nine small maps upon which we drew proposed boundaries for the five new districts and we used, maybe, colored differentiations, like green for one district, or orange for another, and we put those, and so forth, and we put those maps on a wall there in our working offices.

Q. Did these maps include detailed information pertaining to race within certain districts? A. No sir.

Q. Did they include detailed information pertaining to population within districts? A. No sir, not detailed information.

Q. You said you put them in your office, was that in your personal office? A. No sir, not in my personal office. We put them [185] in the offices where all the members of my research staff physically were.

Q. Who had access to these plans as they were being developed? A. Members of the City Council.

Q. Did they, in fact, visit that office and review those plans? A. Yes sir.

Q. All members of the Council? A. I am not certain that all members of the Council. To the best of my knowledge, all members of the Council did visit my office and review those plans.

Q. Did you personally receive any inquiries from the members of the Council during this period of time regarding these proposals? A. Inquiries involving these proposals?

Q. Yes, questions that they might have regarding boundary lines, population, registration, anything of that nature. Did you have any kind of communication with members of the City Council regarding the development of these plans? A. Yes sir, councilmen inquired about population figures, but the only thing we could tell them was the information—Mr. Eckert of my staff is better qualified to respond to this, but to the best of my knowledge, we had ward population figures and we drew the lines based upon our [186] estimates of what the population of these proposed districts would be, but we could not be certain (repeating)

we could not be certain of the accuracy of the population until we received the so-called third-count tapes.

Mr. Treese: For the information of the Court and counsel, our next witness will be Mr. Eckert, who will get into this detailed information.

Judge Robinson: Very well.

By Mr. Treese:

Q. No, Mr. Pezant, out of these conceptual plans and the discussions between you, your staff, counsel and any other interested persons, did there, in fact, develop a fixed plan to be presented to the Council? A. Yes, Councilman Moreau asked us to prepare an ordinance based upon one of the concepts that he had reviewed in the office, and we proceeded to prepare an ordinance after we received the third-count tapes. I believe the third-count tapes came down in the fall of '71, and the ordinances would have been prepared in early 1972, to the best of my knowledge, perhaps January.

Q. All right, did you then turn over the proposed ordinance and map to Councilman Moreau? A. Yes sir. Councilman Moreau introduced the ordinance by initialing the same.

Q. All right, at that time did you, your staff, or [187] the Council, to your knowledge, receive any other proposed plans from sources outside the Council staff? A. Prior to the public hearing?

Q. Prior to the submission of the ordinance, proposed ordinance, by Councilman Moreau? A. The only other plans that were received prior to that, sir, were, perhaps in late 1970, or early 1971, the Bureau of Governmental Research sent the Council some proposed plans, but I don't recall those in detail and the problems connected with those plans were that they did not have the information—the third-count information that would give the accurate population or voter registration, or anything else.

Q. You have mentioned the Bureau of Governmental Research; I wonder if you could describe that organization

and the contacts that you and your staff had with them during this period? A. The Bureau of Governmental Research, as I understand it, sir, is that it is a private corporation, a private corporation. It is made up of a number of businessmen and civic-minded people in the City of New Orleans and for many years, they have undertaken to study various aspects of city government and have other governmental agencies in the City of New Orleans and have rendered reports and recommendations to those respective agencies for improvement of [188] their operations, and they regularly review bond issues, proposed bond issues of city government to explain to the public what these bond issues entail. They also evaluate proposed constitutional amendments to the Constitution of Louisiana which must be submitted to the people, and they evaluate—they are really an information agency which has no conection with government, but is privately funded and they have a small professional staff which is responsible only to that Bureau.

Q. Did they assist you in the preparation——? A. We have had a lot of exchange, but not in preparing plans for the City Council. But we have had a lot of exchange with the staff of the Bureau of Governmental Research in checking the census tapes, making corrections where necessary, correlating that information, transcribing it from the census blocks to the actual voting precincts of the City of New Orleans. We had a lot of—we did a lot of legwork; in other words, with the staff of the Bureau of Governmental Research.

Q. Let me ask you about the plan that—or the ordinance that was introduced by Congressman, or Councilman Moreau. Did that ordinance that was introduced by Councilman Moreau ultimately result in passage by the Council? A. The ordinance was passed by the City Council, but it was amended before it was passed.

[189] Q. All right. What became then of the plan that was passed by the City Council? And by the way, we refer to this as the first plan as we have in our complaint. A. That plan or ordinance was submitted to the United

States Attorney General early in 1972; it could have been either February or March. The record would show that, of course.

Deputy Clerk: Plaintiffs' Exhibit Number 12 marked for identification.

(Plaintiffs' Exhibit Number 12 was so marked for identification)

By Mr. Treese:

Q. Mr. Pezant, there has now been displayed before the Court for identification, Plaintiffs' Exhibit Number 12, which for the information of the Court, again, has been stipulated to by counsel for the Government and counsel for the plaintiffs (indicating document to witness). Do you recognize that plan? A. (Examining the document) Well, sir, the one on the right looks like the original ordinance.

Q. I am speaking now of this one (indicating)? A. Oh, that would be the ordinance as it was finally passed. Yes sir.

Q. All right. Let me stop you for a minute, Mr. Pezant, and ask you about the passage of this ordinance.

Were there public hearings surrounding this [190] consideration by the City Council? A. Yes sir, there were public hearings, to the best of my knowledge, there were three, at last two, and they had three public hearings, and one of them was conducted at night, to the best of my knowledge, to give people who work during the day an opportunity to come down and express their views on the proposed ordinance.

Q. Was there notice of these hearings submitted to the public? A. Yes sir. The City Council is required by the City Charter to advertise all ordinances in the *Official Journal* of the City of New Orleans which happens to be one of the local newspapers, which meets the requirement, I believe, of 50,000 issues a day. But in addition to that, my recollection is that the Clerk of the Council published a special ad, in addition to the requirements of the law, published a special ad notifying—stating—a block ad, I believe it was, like you would purchase a regular commercial ad, advertising the dates and the time of the public hearings and the purpose of those hearings.

And in addition to that, sir, to the best of my knowledge, the local newspaper representatives who attend all of the Council meetings gave quite a bit of—gave notice in their reports of the proposed public hearings.

Q. Did you attend the hearings? [191] A. Yes sir.

Q. Do you know whether the hearings were transcribed? A. Yes sir, those hearings were transcribed.

Deputy Clerk: Plaintiffs' Exhibits 13 and 14 are marked for identification.

(Plaintiffs' Exhibits Numbers 13 and 14 were so marked for identification)

By Mr. Treese:

Q. Mr. Pezant, I ask you to look at those documents (indicating), and ask you whether they represent the transcription of the hearings surrounding the first plan—may it please the Court, we have also stipulated with Government counsel as to the introduction of these transcripts of those first hearings.

Judge Robinson: Very well. Did you want to put them in evidence now?

Mr. Treese: Yes, I will.

Judge Robinson: It would be 12, 13 and 14?

Mr. Treese: That's correct.

Judge Robinson: They will be received.

(Plaintiffs' Exhibit Numbers 12, 13 and 14 were so received in evidence)

Witness: (Examining the documents) Yes sir, [192] these are the transcripts of the public hearings.

Judge Robinson: Since you are already somewhat interrupted, may I take advantage of the opportunity to put just one question to the witness?

Mr. Treese: Certainly.

Judge Robinson: On the board, Mr. Pezant, there are two smaller maps. The one on the left is Exhibit Number 12, which you have just recently identified, and I take it that the smaller map immediately next to it, that is, on the right, is Exhibit Number 11—am I correct, Mr. Treese?

Mr. Treese: That is correct, Your Honor.

Judge Robinson: Would you tell me the difference between those two documents?

Witness: Well, sir, when I first looked at the map on the right, I thought it was—it appeared to be the ordinance as it was first introduced.

The Court: If you went to the board, would that help you in your testimony?

Witness: Yes, Your Honor. (Witness withdrew from the stand and approached the board).

Well, sir, I thought this (indicating) was the original ordinance, but to the best of my recollection, the original ordinance had a dividing line along this boulevard (indicating) which placed one part of Algiers in A, and another part in District C. But I would rely—I would refer [193] to Mr. Jon Eckert of my staff who is more accurate on this aspect of it.

Judge Robinson: Very well, I will hold my question until then.

(Witness resumed the witness stand)

Mr. Treese: The Court has anticipated a future exhibit. The Government has an unamended chart reflecting Moreau's ordinance before it resulted——

Judge Robinson: In Number 12.

Mr. Treese: —in Number 12.

Judge Robinson: Very well.

By Mr. Treese:

Q. Were there any other plans submitted by interested groups, representative bodies of the City of New Orleans, or any other persons? A. At the first public hearings?

Q. Yes. A. Yes sir, the National Association for the Advancement of Colored People submitted a proposed redistricting plan.

Q. Together with the map, did they give a verbal description of their plan? A. Yes sir, they submitted both a map and a three- or four-page description of their proposed plan.

Deputy Clerk: Plaintiffs' Exhibit Number 15 marked for identification.

[194] (Plaintiffs' Exhibit Number 15 was so marked for identification)

By Mr. Treese:

Q. Was the NAACP plan discussed at the public hearings? A. Yes sir.

Q. Was it promoted by representatives of that organization? A. Yes sir. I don't recall, it was signed by the —the letter was signed—I forget who signed the letter, sir, that would be in the record, but the transcript would show that representatives of the NAACP spoke at the hearing and elaborated upon the plan.

Q. Are you familiar with the distinctions between the plan that ultimately passed the Council the first time and the NAACP plan? A. Yes sir.

Q. Are there any similarities, first of all, let me ask you that? A. The general similarities are that the District B is quite similar in configuration, District A is quite similar, and generally all of the dividing—not all of the dividing lines, but generally the dividing lines take a north-south configuration; from the Lake Pontchartrain on the north to the Mississippi River on the south, with the exception that [195] District B in both plans generally, again, has a north-south configuration, but does not extend to Lake Pontchartrain on the north.

Q. You have referred to a north-south configuration as applicable to—well, as a matter of fact, as applicable to all three of these plans. Is there any reason why you, your staff and, in fact, any other person creating a plan would

follow a north-south pattern? A. Well, sir, the wards, the seventeen wards of the City of New Orleans which have been in existence since the City Charter of 1914, or 1912, I don't recall exactly which year, those ward boundaries take a north-south configuration and in most cases run from Lake Pontchartrain to the Mississippi River, with the exception of a few wards, located in District B, or which coincide with District B. And to the best of my knowledge, the representative districts and the senatorial districts traditionally took a north-south configuration.

Q. How about the governmental services of the City of New Orleans, are they in any way related to the north-south configuration? A. The governmental service?

Q. Yes, I am speaking of streets, canals, sewers. A. Well sir, the canals of New Orleans would run both ways, but most of the—I would say the major canal network, many of them, or most of them, take a--run north [196] and south.

For example, one of the, one of the big natural barriers in the City of New Orleans is what we call the Industrial Canal, or I think it may be officially the Inner Harbor Navigation Canal, which was dug many years ago for the purpose of water traffic between Lake Pontchartrain to the Mississippi River, runs from Lake Pontchartrain to the Mississippi River, or very near the line, between the line between District—a little to the right of District D Line on all of those maps (indicating). It's a very large canal, and it has been a natural barrier for many years in the City of New Orleans.

In addition to that, there is—that's over in District E. The dividing line between District D and E of the Councilmanic Districts presently, those under the present plan which was adopted in 1961, generally follows what we call the People's Avenue Canal, which again, is another large drainage canal and adjacent to that drainage canal is a railroad track, that's that green line, sir, on that map you are looking at up there. It doesn't go all the way down to

the river, but it goes down to the northern part of that map (indicating).

Moving over to the left (indicating), there is the London Avenue Canal, again, which is a very large drainage canal that runs from Lake Pontchartrain southward——

[197] Q. May I interrupt you for a moment. Would it be more helpful, perhaps, since you know the city better than I do, if you would just point to the canals and so forth?

(Witness withdrew from the stand and approached the board)

A. Sir, this is the Industrial Canal (indicating with a pointer on the map) which runs down this way and into this, it has locks here to prevent flooding with the Mississippi River, but it continues this course.

Now moving over to the west is the (examining the map) —moving over to the west is People's Avenue which is a very large drainage canal, and just to the right of it—there are no homes or anything in between—but right adjacent to the canal is the railroad tracks of the Southern Railroad which comes along the Lake, curves down and parallels to form a double natural barrier down to this point (indicating).

Moving over westward, we have this large London Avenue Canal, which is another very large drainage canal, and these things contain huge leverage to prevent flooding the neighborhoods of the City of New Orleans. Most of the land in New Orleans is at or below sea level, and most of the canals—most of the water in the canals is well above sea level.

Moving over here (indicating on map) we have a natural barrier called Bayou St. John which travels down in here (indicating).

[198] Moving over here (indicating) we have the Orleans Avenue Canal which, again, has huge banks.

And finally moving over here (indicating), the dividing line of Orleans and Jefferson Parishes contains another huge drainage canal, and I believe it's called the Seven-

teenth Street—I'm sorry, this isn't it (indicating), this is it here (indicating); it is called the Seventeenth—it's called the Jefferson Street Canal.

Many of the major boulevards parallel these canals (indicating). This is West End Boulevard, and it is a very wide boulevard; there's two or three hundred feet of neutral ground between the roadway, and it comes down and meets with the Interstate 10 expressway system here (indicating). We have Canal Boulevard which is a major boulevard crossing City Park here (indicating), which is a large park.

We have Legion Field Boulevard and Franklin Avenue, which are our major boulevards.

Q. Now directing your attention, Mr. Pezant, to District C under the present plan, the streets, or arteries that are running parallel to the general direction of District C, are they major streets and arteries? A. Yes sir. This is Canal Street right here. It runs from the Mississippi River where this would be northwestward because of the curvature of the river, and then it meets up with this Canal Boulvard on a dogueway up.

[199] After Canal Street, we have Banks Street, which is a divided boulevard which parallels Canal Street, Tulane Avenue which is a continuation of a US highway which goes to Baton Rouge, continues in here (indicating). This is the Pontchartrain Expressway (indicating) which is an elevated expressway which picks up the traffic from the Mississippi River Bridge and brings it into the connection with the Interstate Highway.

Q. Now in the City of New Orleans—you may take the stand—(Witness resumed the witness stand)

Q. —in the City of New Orleans you have, of course, wards and precincts? A. Yes sir.

Q. In developing these plans, as you and your staff did, did you observe boundaries of the wards and precincts? A. We could no longer—we had to—Councilmanic Districts had to overlap ward boundaries for the first time. I should

say that in 1960 I was a member of the staff and the City Council was redistricted, and at that time the way that the Council was redistricted is that the ward combinations to constitute, or to comprise Councilmanic Districts were changed, but ward boundaries were left intact. In other words, a Councilmanic District either consisted at that time of one or more wards, a combination of wards, and a population [200] equivalency was reached by that method.

But at this time we realized that ward boundaries had to be overlapped to constitute Councilmanic Districts because of changes in population. For example, District E under the existing Councilmanic Districts, District E consists of Ward 9 of the City of New Orleans and it is geographically larger than the rest of the city; but in population in 1960 it contained the approximate population necessary to be one-fifth of the City of New Orleans, or the Councilmanic Districts.

At this time we knew that Ward 9, according to the '70 Decennial Census contained approximately 135,000 in population and we knew that the normal—the amount of people in a Councilmanic District would approximate 118,000 inasmuch as the new city census showed a population of 595,000 people.

So we knew that we could no longer observe boundaries. But we——

Q. Did you observe precinct boundaries? A. Yes sir, we observed precinct boundaries.

Q. Why? A. Well, sir, I was asked that question in my deposition. If—We have frequent elections in the City of New Orleans and we have two and three voting machines in each precinct. Many of those voting precincts are in carports of private homes, in schools, and if there is a procedure where you have to go in and show your registration papers, there [201] are registration books that are available to the poll commissioners; they have to check you out and see that you are currently registered and then after they do that, you go stand in a line and wait to vote and one or more of the machines.

We felt that if a person in a voting precinct had to go in a precinct and vote, but two different councilmen, depending upon where they lived in that particular precinct, that this would represent a very disorderly situation and perhaps, a chaotic situation.

The appropriate newspaper articles which showed during some elections in the City of New Orleans that long lines of people were waiting to vote in heavy elections; and it just didn't seem practical at all to the City Council staff that voting precincts had the additional burden of having to segregate people according to which councilman they would vote for.

Q. I wonder if you could describe the size of the precinct in terms of population to give the Court an idea of how many people we are talking about? A. Some precincts range in registered voter figures from four or five hundred up to twenty-five hundred registered voters. Now the population would be much larger.

Q. Do you have any idea at all what the population of a typical precinct is? [202] A. Well, sir, the total voter registration of the City would be about—and I am estimating, sir—about 230,000, and the population is 596,000; so that would give you some idea if an average precinct followed that same proportion, then a precinct with 2,000 or 2,500 voters couuld contain as much population as 5,000 or 6,000 people.

Q. So what you are telling the Court is that the precinct is a distinctive part of the election machinery of the City of New Orleans because of the votes and so forth——? A. Yes sir, and when you go in a precinct, sometimes—sometimes a New Orleans voter is required to go in on a municipal election and vote for some forty or fifty—maybe thirty or forty different offices that are being contested, and in addition to that, sometimes they have the additional burden of voting for thirty or forty proposed constitutional amendments to the State Constitution. And it's a very burdensome task; and these voting machines are set up so that——Let me give you an example, in Councilmanic District A, people would be voting for Canndidate A, B, or C, depending on how many there are. In another Councilmanic District, there may be three or four more candidates than that.

The City of New Orleans also overlaps two Congressional Districts, although those races are held at a different time; there are times when New Orleans voters in different parts of the city are voting on different offices, [203] different propositions, depending on whether they live in one Congressional District or another, or one Councilmanic District, or another, and those voting machines are set up so that they vote on the appropriate offices; and we think that it would be quite a burden for the poll commissioner to have to say, "Be sure you don't vote for the councilman in District B, or vote for councilman in District C," or vice versa.

Q. Is there any office that is selected on a ward-basis within the City of New Orleans? A. (Pausing in thought)

Q. How are tax assessors chosen?

Judge Robinson: I'm sorry?

Mr. Treese: How are tax assessors chosen?

Witness: Tax assessors are chosen by municipal districts which are combinations of wards. The neighborhood of Algiers, south of the River, is known as the Fifteenth Ward of the City, and it constitutes one assessorial district, one assessor in that district. There are seven assessors in the City of New Orleans, and Ward Nine, or District E is another assessment district—I'm sorry (repeating) I'm sorry, one assessment district contains both Districts E and D, Ward 7, 8, and 9, and a number of other assessment districts in the balance of the City of New Orleans—either 5 or 7, I am not certain.

[204] By Mr. Treese:

Q. Have you ever changed the boundary lines of a precinct? A. Yes sir, I have changed the boundary lines.

Q. What's involved? A. Well sir, we find population changes and people complain to the members of Council that there are too many people in the precinct and we con-

fer with the Registrar of Voters and an ordinance is required, a city ordinance is required, to legally change the boundaries of the precinct; and then we have to submit that change to the United States Attorney General in the same manner that we would submit a change in the Councilmanic Districts; and he has to pass on the same. This is a lengthy procedure and we get inquiries back from the Attorney General's Office asking why we are changing the precinct boundaries, what was the population before that change, after that change, minority population, and etcetera.

Judge Robinson: You are referring to which Attorney General? The United States?

Witness: The United States Attorney General.

Judge Robinson: Very well.

By Mr. Treese:

Q. All right now, Mr. Pezant, you have told the Court that you considered natural boundaries, you have displayed [205] some of those to us, you have told the Court you have considered streets, governmental services, canals, you observed precinct lines, ward lines, all of this was programmed into your considerations in developing a redistricting plan for the City of New Orleans.

Now let's go back to the fundamental reason for the charter provision, mainly, to balance population. I wonder if you could describe to the Court, how you reached a determination in achieving a population balance within the five districts?

In other words, you have already told the Court that District E had a hundred thirty thousand, plus, based on the 1970 Decennial results, Census results. Now how would you, for instance, eliminate the necessary population from District E and place it somewhere else? What considerations went through you and your staff's minds and your procedures, how did you arrive at this? A. In the digest that Mr. Salatich sent to my staff, he instructed us that we should observe the things I said we should observe, and he also said that with respect to race, we should be ever mindful, or some words to that effect, that the method in which we drew the plan would not gerrymander either in favor of white people, or in favor of—or in favor of either race, as a matter of fact. This is the way I interpreted his instructions.

[206] In changing District E, we had a couple of options available to us; on the northern end of District E, there are two middle class neighborhoods known as Pontchartrain Park and Gentilly Woods.

Q. Again, I wonder if you would step to the chart, if it please the Court? A. Yes.

(Witness withdrew from the stand and approached the board)

This is Pontchartrain Park (indicating), it is so noted on the map. It is a middle class black community, single-family homes. South of that is Gentilly Woods, south division, a middle class white community of single-family homes. We reasoned that a proposal to remove this entire area from District E would achieve certain objectives. These people are hemmed in on the east by this large Industrial Canal—Incidentally, they have transportation problems of access, which I don't know whether it is related, but they are bounded on the north by railroad tracks and Lake Pontchartrain, on the east by Industrial Canal, on the west by the two forms of the barriers that I mentioned, the railroad tracks and the People's Avenue Canal and they have a common shopping center—both of these neighborhoods have a common shopping center, a golf course that is used, not only by both of these neighborhoods, but other people. They have common [207] access to the Ches Menteur Highway and we reasoned that one possibility would be to place this entire neighborhood in the adjacent district would achieve—would leave District E with the population figure that it should have under the new proposal.

It would not change the initial makeup of District E inasmuch as these two neighborhoods are of fairly equal population.

And we also went down here (indicating) and drew another proposal that generally went across here (indicating) and down Congress, if I can find it on here (examining the map), a somewhat rectangular section that, again, contained—yes, sir, here it is (indicating)—compactness was one of the factors we were instructed to observe in drawing district lines.

This line, again (indicating), and Mr. Eckart can testify to the figures, generally removed from District E an equal number of whites and blacks so as not to deliberately draw a line along racial—to draw lines to observe one race or another. And the plan that was adopted included this proposal rather than the one on the north.

Mr. Treese: All right, resume your seat.

(Witness resumed the stand.)

By Mr. Treese:

Q. Did you consider the residences of the incumbent [208] City Council? A. Yes, sir, we considered them. We considered it preferable if other factors could be observed not to include two or more incumbents in a district, a particular district, as I said if the other guidelines could be observed.

Q. Which guidelines or factors, as you sometimes refer to them, did you consider to be of principal importance? A. Population, naturally, historic boundaries and neighborhoods, and the racial factors.

Q. All right. Were you ever instructed by any City Councilman for the City of New Orleans in your deliberations, in your preparation of these plans to protect his seat by placing him in a district so as not to compete with an already incumbent City Councilman? A. I was never directed to do that, no, sir.

Q. Did you ever discuss that with any City Councilman? A. Yes, sir, it was discussed with City Councilmen.

Q. Could you describe some of those discussions? A. Some members of the council privately discussed with the Councilmen that they preferred not to be involved in such a situation as to have to run against another incumbent, but I was never directed that this had to be a major consideration.

Q. Were you ever told not to consider it? [209] A. Sir?

Q. Were you ever told not to consider the residences of the City Councilmen? A. Not to consider the residences?

Q. Right. A. No.

Q. This never came up with your plan? A. That's right.

Q. You mentioned that this whole program began at the request of Congressman Moreau. A. Councilman Moreau.

Q. Excuse me, Councilman Moreau, I elevated him (smiling). Does he run within the district or does he run at large? A. He runs at large, sir.

Q. Did you consider the bridge to Algiers on, let's say, the future second bridge for the City of New Orleans in your consideration of redistricting? A. Yes, sir, we considered it as the second plan evolved, we gave it a lot more consideration.

Q. In other words, Mr. Pezant, Plan One did, in fact, break up Algiers into three sections, applied part of Algiers to A, B, and C, isn't that correct? A. That's correct, sir.

Q. Now you have also described, Mr. Pezant, that [210] part of your duties included the drafting or ordinances and there's been testimony in this case about certain gyrations within the city of New Orleans involving consideration of increasing the size of the City Council to nine—to eleven. Did your office have anything to do with the development ordinances, with the drafting of ordinances, or proposed ordinances to accomplish those results? A. Yes, sir.

On the same date that the first Moreau ordinance passed, I had prepared for Councilman Sapir an ordinance which would set up a charter change, the election, as required by the City Charter for the purpose of increasing the size of the New Orleans City Council from seven members to nine

members and from five districts to seven districts. That ordinance was passed on the same day that Councilman Moreau's Redistricting Ordinance was passed.

Q. All right, now we have had testimony describing the events surrounding those—the enlargement issues of the City Council, so I won't get into it with you, but your office actually did draft the ordinances, is that correct? A. I prepared the second ordinance for Council Sapir and Ciaccio, I believe, which would have proposed an increase in councilmen to eleven members.

Q. Very well.

[211] All right, let's get back to the question of approval or disapproval of Plan One by the Attorney General. Do you recall when Plan One was disapproved by the Attorney General?

Judge Robinson: Isn't that all stipulated, Mr. Treese?

Mr. Treese: Yes, sir, I suppose it is.

Judge Robinson: I seem to recall that it is.

Judge Waddy: It is stipulated.

By Mr. Treese:

Q. Mr. Pezant, upon the disapproval of Plan One by the Attorney General, were you and your staff ordered to get busy again to go back to the drawing board to redraw, to redistrict a plan? A. Yes, sir. Councilman Moreau spoke to me and said, "I am a Councilman at Large, and in effect I have no axes to grind; I am not involved in these districts and I feel a responsibility to get on with this business and draw a fair and equitable plan, one that you think, or the staff thought would overcome the objections to the first plan by the U. S. Attorney General's office."

Q. So what did you do? A. We drew four plans for Councilman Moreau.

Q. And would you describe those four plans briefly, briefly as possible just for identification? [212] A. Yes, sir. The first plan we submitted—I don't know how the numbers go, but we submitted four plans; one of them was the same plan that was submitted to the City Council by the NAACP at the first council hearing.

Q. Is that Plaintiff's Exhibit 15? A. Yes.

Q. All right. A. Another plan was the ordinance that was adopted.

Q. That's Plaintiff's Exhibit 3 and that is the plan that is in consideration. A. Two other plans incorporated two and three of the same districts as the NAACP plan had variations of one or two districts. There were quite largely based on the plan of the NAACP.

Q. Now, Mr. Pezant, you have described all of the considerations that were observed in the preparation of Plan One and preparation of the ordinance that evolved into Plan One. Were those same considerations taken into observation in preparing the four plans for Councilman Moreau? A. Yes, sir.

Q. All right. Let me ask you this, did you ever consider registration; by that, I mean concentration of registered voters, in addition to the population factors? A. Well, sir, from the very beginning, I was instructed by Mr. Salatich that the Justice Department would want [213] registration figures in connection with everything submitted by the City Council and every time we would draw a plan, we would first draw the population and then either at the same time or at some later date, we would obtain the voter registration figures and submit that also.

Q. All right, now—— A. We also had to be mindful of the fact that we did not just cut through and divide a concentration of black population.

Q. In compiling all of the statistics and facts necessary, and figures necessary, to prepare these plans, I assume that this information physically took up a lot of space and so forth, and was all contained within your office, is that correct? A. Yes, sir.

Q. Now was that information available to the citizens of the City of New Orleans? A. Readily so. After each public hearing we—people walked up to the members of the Council and Clerk of the Council and asked us for map. We gave out maps; we attached to each map the population and registration figures. People came in and visited

our offices and asked for copies of maps, or the ordinance that had been passed, all the population figures, agencies of city government, other agencies of city government called me to obtain copies of maps. I [214] estimate, sir, that the Street Department got so tired of giving us maps, you know, they got a little irked with us while consumption of maps, but we did readily give maps out to all agencies.

Q. All right, now we are up to that point where a second plan is being considered by the Council. Did you draft the ordinance for that second plan? A. A member of my staff drafted it under my supervision.

Q. I see. And that went to public hearing, did it not? A. Yes, sir, two more public hearings, to the best of my knowledge.

Q. And was there the same type of announcements to the public of public hearings and the same type of publicity surrounding these hearings? A. Yes, sir. In addition to that, the second public hearing—the public hearing for the ordinance, the second ordinance, was televised live by the—I think it is Channnel Twelve in New Orleans, the local affiliate of the—with the Public Broadcasting System, the educational television network; it was telecast live.

Q. All right, now was there a transcript made of those hearings? A. Not a transcript; there were tapes made of of those [215] hearings.

Q. And that passed, the ordinance that you had prepared passed? A. That ordinance passed, yes.

Q. Do you recall the vote, six to one? A. Yes, I believe it was six to one.

Q. All right.

Mr. Treese: Would the Court indulge me for a moment?

Judge Robinson: Certainly.

(Mr. Treese conferred privately off the record with Mr. Stoner.)

By Mr. Treese:

Q. I just have one last line of inquiry, Mr. Pezant, and that involves the city section known as Algiers.

I think you alluded to the fact that you gave increased attention to the Algiers problem in the preparation of the second plan. Would you further describe what that involved? A. Yes, sir. At the first public hearing, the City Council got informed from the public hearing considerable opposition from representatives of the Algiers Section to any division of that neighborhood. So that, obviously, had an effect both on the City Council and the City Council staff.

In addition to that, sir, we became a little [216] wiser, hopefully, of the important issue of the need for another bridge between the City of New Orleans and the other side of the river. It is a very critical issue in our city and as presently constituted, Councilmanic District A places a government representative in a terrible position of having to represent people on one side of the river who have violent opposition to the construction of a bridge in the proximity of their neighborhood in the eastern part—I'm sorry, in the large side of the city, let's call it, and the people on the other side are desperately in need of another artery to take them across this Mississippi River.

And to be a Councilman from either District A or B and represent those portions north of the river and have to represent a group of people on the south side of the river who are violently opposed to it is a very untenable situation.

So we reasoned that the logical thing to do would be to place Algiers in combination with one of either District C, D or E.

When the city charter was first adopted in 1954, Algiers was a part of what now is Councilmanic District—it was a part of Councilmanic District C pretty much as the—pretty much as the district is now proposed by ordinance.

In other words, the people who live—I may have to elaborate on that, sir. Some years ago, the Mississippi River Bridge Authority proposed a bridge across the Mississippi [217] River which would have its northern terminus in the vicinity of Napoleon Avenue.

Judge Robinson: And where is that?
Witness: Would you want me to come down there?
Judge Robinson: Yes, please.

(Witness withdrew from the stand again and approached the board.)

Witness: This, sir, (indicating) is Napoleon Avenue. It runs—it is an avenue of beautiful New Orleans homes and everybody felt that a large bridge across this Mississippi River would result in the destruction of the neutral grounds.

New Orleans has large neutral grounds or grass areas between this roadway, wide grass area, which are results of drainage canals being filled in many years ago and gives us the benefit of wide boulevards.

The people in this entire uptown (indicating) area organized to prevent construction of a bridge that would pour forty or fifty thousand vehicles a day along this historic beautiful avenue.

At a later time, the Mississippi River Bridge Authority was considering, again, a bridge which would have its northern terminus at General Taylor Avenue, if I can find it—I think this is it (indicating), right here, General Taylor, and that resulted in some pretty violent opposition by the [218] black community in that area to the construction of a bridge.

So the uptown residents of New Orleans are generally bitterly opposed to the construction of a bridge anywhere in this area (indicating on map) of the city.

(Witness resumed the witness stand.)

Mr. Treese: I have no further questions.
Judge Robinson: At this point I think this would be a convenient time for us to take a brief recess.
At this point, Marshal, the Court will stand in recess for ten minutes.

(Whereupon, the Court recessed at 11:15 a.m.)

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MID-MORNING SESSION

(The Three-Judge Court reconvened at 11:29 a.m.)
Judge Robinson: Mr. Shurtliff, you may cross-examine.

Cross-Examination

By Mr. Shurtliff:

Q. Mr. Pezant, do you know approximately how many precincts there are in New Orleans? A. To the best of my knowledge, sir, there are between four and five hundred, there might be five hundred at this time, between four hundred fifty and five hundred.
[219] Q. And have there been changes made in precinct boundaries in recent years? A. A minor number of changes, sir. We have submitted about four or five to the Justice Department in the past year or two.
Q. Four or five precinct changes? A. Yes, sir, to the best of my knowledge.
Q. Were there changes made in precinct boundaries before the last year, but within the decade? A. In the last twelve months.
Q. Since you have been a director of the Council's Research Staff in 1961, have there been other precinct boundary changes? A. Yes, sir.
Q. Approximately how many, do you recall? A. I don't really know, Mr. Shurtliff, because up until the past few years, a number of changes were made by the—proposed by the Registrar of Voters, and perhaps by the City Attorney's office, or other offices. I wouldn't really know.
Q. But you do know that changes were made in precinct boundaries? A. Yes, sir, changes were made.
Q. And you know that within the last year, or so, four or five changes have been made? [220] A. Yes, sir.
Q. And submitted to the Attorney General pursuant to Section Five of the Voting Rights Act of 1965? A. Yes, sir.
Q. And were those changes approved by the Attorney General? A. Sir, of the fours or five, to the best of my

knowledge, most of them are still pending, but it is quite possible a couple of them were approved by the Attorney General's office.

You see, to the best of my knowledge, that approval would go to the City Attorney General's office, rather than to my office.

Q. You stated that you have worked with the Bureau of Governmental Research in the collection and correlation of population data, is that correct? A. That's correct.

Q. And in your experience, are statistics and data provided by that agency reliable? A. Yes, sir.

Q. In late 1970, or early 1971, pursuant to requests from Councilman Moreau you started developing concepts of redistricting? A. Yes, sir.

Q. Approximately how many concepts did you develop [221] at that time? A. About nine.

Q. And were there large differences, or variations in those concepts? A. I don't think the differences were too large, but that may be a matter of opinion.

Q. What did you use as a starting point? A. We used as a starting point the traditional boundaries of the City of New Orleans and the geographic configuration of the city.

Q. Would you state that with a little more particularity, did you use ward lines, precinct lines, or—— A. Ward lines. We thought that it was injudicious to divide a precinct, so to that extent we used precinct lines.

Q. How did you use ward lines in those concepts? A. I just gave an example in District E how we did that.

We had this traditional ward line that goes from Lake Pontchartrain to the Mississippi River, and we knew that we had to change that boundary to accommodate the change in population of that district and we drew what we thought were compact, new lines.

Q. So at the outset, you knew that you could not follow totally existing ward line, is that correct? [222] A. Yes.

Q. What factors did you consider given that knowledge as to where to change the ward lines? A. Where popula-

tion changes made it necessary and we often in lieu of traditional ward lines tried to use major boulevards to the extent that we could.

Q. And major boulevards are some of those that you described on direct examination when you listed some of the boulevards on the northern part of the city? A. Yes, sir.

Q. Did you use Interstate Highways as major dividing lines? A. No, sir, only one Interstate Highway.

Q. In which direction does it run? A. It runs east-west until it reaches the proximity of the Industrial Cancel and then it turns southerly. It makes a general turn southerly into the central business district; then travels northwest, again, to the line dividing Jefferson and Orleans Parishes.

Q. You only have the one Interstate within the city of New Orleans? A. Yes, sir.

Q. After you developed these conceptual plans, did you present them to the Councilman, or a Councilman? A. I personally informed each Councilman and I [223] perhaps did it by memorandum, or memoranda, that we had these concepts for the Council to start visualizing the possibility for redistricting the City of New Orleans.

To the best of my knowledge, most or all of those Councilmen personally reviewed those concepts.

Q. Did you provide population statistics at that time? A. Very rough statistics because we had only—we had a newspaper report of what the ward figures, population figures, were, and at that time the City Planning Commission which had been designated as the central storehouse for census data, I had instructed them to give me refined population figures when they became available.

Q. Did you provide voter registration figures at that time? A. I'm not certain, Mr. Shurtliff, we possibly did.

Q. Did you have those figures? A. We started collecting those figures at some time after we understood this effort for the reason I have previously stated, we were advised by the city attorney's office that we must have those figures for the U.S. Attorney General's Office.

Q. That was the only reason that you collected them? A. Well, sir, that was the primary reason we collected them. We also were asked every time there was a [224] public hearing to provide not only population figures, but voter registration figures.

Q. Who were you asked by? A. By people who attended the public hearings.

Q. Were you ever asked by a Councilman to provide those figures? A. I think so, to the best of my knowledge, some members of the council asked for those figures.

Q. Do you know why they asked for those figures? A. No, sir, I did not know.

Q. Do you know what use they put those figures to? A. No, sir, I do not know what use they put those figures to.

Q. After you drew the conceptual plans, when did you then draw a plan in final form, ordinance form? A. In early 1972 we prepared an ordinance for Councilman Moreau which became the first plan that was submitted to the Attorney General's Office.

Q. That was the plan that subsequently passed the City Council? A. It was amended by the City Council before it was passed.

Q. Were there public hearings held on that plan? A. Yes, sir.

Q. On the initial plan considered by the City Council? [225] A. The ordinance was introduced.

Q. And transcripts of those hearings were made? A. Yes, sir.

Q. Are those transcripts complete? A. Yes, sir. I asked the Clerk of the City Council to provide me with official transcripts of the public hearings and they were certify to, as I understand it, by Mr. Joseph Peterson, Clerk of the Council.

Q. And does that transcript include written statements, if any, that were presented to the Council with those hearings? A. Written statements? I don't know, sir. I don't know whether the court reporter transcribed those statements within the transcript or not.

Q. And what was discussed at this public hearing? A. All right, sir, the public hearing took two directions; one direction, the National Association for the Advancement of Colored People submitted the proposed plan that has been entered into the Court; the other direction taken at the public hearing was that there was a considerable effort to have—to urge the City Council to increase the size of the Council.

Q. What persons urged that position? A. Mostly black representatives.

Q. And what were they advocating? [226] A. They were advocating, to the best of my knowledge, either nine or eleven—nine and eleven-member council, more emphasis on eleven than nine.

Q. And was that an eleven-member single district plan that they were advocating? A. I believe one group advocated a ten-district plan with one Councilman who would serve as vice mayor, to the best of my knowledge.

Q. Did any one of those hearings advocate an eleven-member single district plan? A. It is possible, Mr. Shurtliff, but as I recall that advocacy was a ten-district, one at large, vice-mayor plan.

Q. And those persons that spoke to a nine-member council, what kind of plan did they advocate? A. I don't know. The general direction was increased—to increase the size of the City Council, Mr. Shurtliff, I am not certain how many people advocated a nine-member plan.

Q. Was anyone advocated, as you recall advocating a nine-member single district plan? A. I can't be sure.

Q. Did your office ever prepare an ordinance calling for a referendum election on a eleven-member plan? A. Yes, sir.

Q. Did that ordinance call for a ten-member by [227] district one at large plan? A. No, sir, it did not.

Q. Did it call for a eleven single member district plan? A. No.

Q. What did it call for? A. It called for a nine-district councilmen and two at-large.

Q. Do you know the genesis of the nine-district two at-large plan? A. Do I know the genesis of it? The ordinance to do that was introduced by Councilman Sapir and Ciaccio.

Q. Do you recall anyone at the public hearings advocating that plan? A. I can't be sure, but I again, I say the general direction, or one of the major directions of the speakers at the public hearing was to increase the size of the City Council.

Q. Did you ever prepare an ordinance calling for a nine- or an eleven-member single district plan? A. A nine or an eleven? I prepared an ordinance for a nine-member council with seven districts. I prepared an ordinance for an eleven-member council with nine districts.

Q. But you never prepared a plan for eleven or a nine single member district? [228] A. I've never prepared an ordinance for eleven-single member district, or nine-member.

Q. Were you ever asked to by any Councilman? A. No, sir.

Q. You stated at the public hearings the discussions also went to the plan under consideration by the City Council, is that correct? A. Yes, sir.

Q. And were the persons that spoke generally for or against that proposal, do you recall? A. They were generally against it.

Q. Do you recall what the positions were—what their criticism was, the general criticism, if there was a general criticism? A. The people who lived in the Algiers Section of the city were critical of the division of that area. The black representatives were generally in favor of an enlarged City Council and that to my knowledge is the direction and the NAACP submitted the redistricting plan that has been entered.

Q. After a public hearing, the proposed ordinance was amended, is that correct? A. Yes, sir.

Q. And what did it do in terms of the Algiers or Fifteenth Ward problem? A. It did what is indicated on the map (indicating [229] by pointing) on the left. It divided Algiers into three Councilmanic Districts.

Q. And this was after the persons from Algiers asked that it be left intact? A. I'm sorry, you say after? (Pausing in thought) Yes, it did.

Q. What other changes did the amendment to the original ordinance make? A. Well, Mr. Eckert is better qualified to respond to that. He did the actual work, but it would have had to make some change on the other side of the river, on the northern side of the river, to compensate for for population changes that would have been brought about by the amendment to the ordinance.

Q. Mr. Pezant, are any city services provided by the wards? A. The assessors are elected by combinations of wards, assessment districts, as I mentioned before.

Q. How many assessor districts are there? A. There are seven, to the best of my knowledge, sir.

Q. Are those—— A. But it might be five. I am almost positive it is seven.

Q. Are they represented on a one-man one-vote principle? [230] A. No, sir, they are not.

Q. Are any other services to your knowledge provided on a ward basis? A. Well, sir, the community of Algiers has its own Clerk of the Court; it has its own court; it has some city services that are provided over there for those people, weight-tag inspection, and as I said, officially, by law, they are provided with their own city court and all the things that go with a city court. They have their own assessor and clerk of the court, councilman, things of that nature. We have a first and second city court.

Q. And one is in Algiers and one is on the main body? A. Yes.

Q. At the time the initial or first plan was approved, then, Algiers was split into three prospective Councilmanic Districts, is that correct? A. Yes, that was as the ordinance passed.

Q. Were there any ordinances proposed dealing with the city courts? A. No, sir. I believe those are established by state law.

Q. The factors that went into the drawing of the first plan then were ward lines? A. Traditional political boundaries, geographic [231] boundaries, population, and as I said, the effort to avoid any dilution of the black vote or black population.

Q. Would you define that for us, what is meant by in your opinion dilution of the black vote, or black population? A. Well, sir, I didn't originate the term; it came to me in a digest of the regulations, or requirements of the Justice Department.

Q. How did you use the term? A. How did I interpret it? As to not draw any lines to gerrymander, to divide the black neighborhoods so that the population of voting strength of that neighborhood would be split up.

Q. What is the neighborhood? A. The neighborhood? What is a neighborhood? I don't know that I am an expert on what is a neighborhood, but as I just described, we have neighborhoods like the Pontchartrain subdivision, the Gentilly Woods subdivision, which generally takes on a characteristics of the neighborhood. There are associations formed by such neighborhood groups.

Q. All right. In your definition, are neighborhoods smaller or larger than wards? A. They are smaller than wards, generally.

Q. Do you have any neighborhoods that cross ward lines? A. I am sure it is quite possible, sir, that there [232] are neighborhoods that cross border lines.

Q. Could you—on your knowledge of the city, which we don't have, could you tell us one or more that do in your opinion? A. Neighborhoods that——

Q. Cross ward lines. A. I don't know of any offhand, Mr. Shurtliff, but I don't deny the possibility.

Q. Did you consider as a factor in drawing the redistricting plan whether or not to place two or more incumbents

in the same Councilmanic districts? A. Yes sir, I considered that.

Q. Why was that a factor? A. Well, sir, my staff and I considered it a factor. We thought that where other guidelines for—where the other guidelines could be observed, it was not necessarily compelling to put two councilmen in the same district for one simple reason, before a redistricting plan could become anything else, it had to become an ordinance in the City of New Orleans.

Q. Why would placing two or more incumbent city councilmen in the same district have an impact on becoming an ordinance? A. Well, sir, it is quite possible councilmen who placed in the same district would react adversely to such an ordinance. This is a possibility.

[233] Q. Why would they act adversely to that? A. We went over that in my deposition, Mr. Shurtliff, and I don't know that any incumbent—my understanding is generally incumbent office holders do not lie to run from a district with other incumbents office holders for the same office.

Q. Do incumbent councilmen or incumbent politicians like to run from districts in which they might be defeated? A. I don't know whether I am an expert on, even though I have studied political science, Mr. Shurtliff. You are asking me what goes on in the minds of incumbent office holders?

Q. If you drew a district that placed two or more incumbents in the same district, do you believe that that would have impact on whether or not that plan would be passed as an ordinance? A. Yes, I thought it would have an effect.

Q. And that effect would be because councilmen would not like that? A. I presume that incumbent councilmen would not like the possibility of an ordinance that places them in a district with another incumbent councilman.

Q. Did anyone ever tell you that, any councilman? A. I said that individual members of the council have expressed to me at times a preference not to have to be [234] placed in a district with other incumbents, but I was never mandated not to do this. As a matter of fact, I wasn't given

a lot of specific instructions by councilmen. This plan was prepared; I was given general instructions by Councilman Moreau and on another occasion Councilman Beer told me that in the first undertaking of this entire assignment, he said, "remember this, getting Peter Beer reelected is not one of the most important considerations."

Q. Did any other councilmen ever tell you that? A. No, sir.

Q. So some councilmen, though, did express their desire not to be placed in the same district with other councilmen? A. Yes.

Q. Did they express any other wishes along those lines? A. Expressed a wish to get this job done, Mr. Shurtliff.

Q. Did any ever express wishes to particular configurations they would like their district to take? A. On a few occasions, Mr. Shurtliff, an individual member of the council would ask me if an individual line were changed slightly, what would be the population figures and I never considered those as any official plans because all we did was provide a service of recounting—recapitulating [235] figures for them.

Judge Robinson: How frequently did that occur, inquiries of that sort.

Witness: Sir, to the best of my knowledge, three or four occasions.

By Mr. Shurtliff:

Q. Would you provide those figures? A. Yes, sir.

Q. Would they be provided by population and voter registration? A. Yes, sir, I generally provided both statistics.

Q. Were they broken down by race? A. Yes, sir, population and voter registration broken down by race.

Q. You stated that when you came to consider the second plan after the first plan had been objected to by the Attorney General that you considered more importantly at that time the bridge issue as it affected Algiers. A. Yes, sir.

Q. Were any other factors that changed between the first and second plan? A. Yes, sir, we began to seriously consider the submission by the NAACP as a viable plan that could be approved by the City Council and could be accepted by the Justice Department.

[236] Q. How was it seriously considered? A. Well, sir, I believe my testimony showed that we submitted two Councilman Moreau the NAACP Plan and three other plans which were basically variations of the NAACP Plan.

Q. Was the NAACP Plan considered during the first drawing of the first plan? A. The NAACP Plan was not presented until after the first plan was drawn and prepared into an ordinance.

Q. Was it presented before the first plan was finally approved by the City Council? A. It was presented between the introduction of the first plan as an ordinance and the final passage of that ordinance during the period in which the ordinance was acted upon.

Q. And was it presented before the amendments to the first plan was offered? A. Yes, sir, because the amendments were officially introduced on the day that, to the best of my knowledge, on the day that the first ordinance was passed.

Q. The amendments to the first ordinance were presented as an amendment on the date they passed? A. To the best of my knowledge, sir.

Q. This was after the NAACP Plan had been presented to the council? A. Yes, it would have been.

[237] Q. Did you participate in the discussion leading up to the plans presented by the amendments, the first time? A. The amendments to the first ordinance?

Q. Right. A. Yes, sir.

Q. Where were those discussions held? A. They were held in the office where my research staff works.

Q. And did you attend that? A. Part of the meeting I attended, yes, sir. If you want to call it a meeting.

Q. Who else was in attendance? A. I believe all five district councilmen.

Q. Would you describe what of the meeting? A. I didn't attend the entire meeting, Mr. Shurtliff, I was there for a period of time.

Q. Would you describe that portion of the meeting that you were present at? A. Describe it? The member, three members or more members of the City Council decided to amend the ordinance as indicated on that map (indicat- on the left.

Q. And were they discussing prospective amendments in a plan? A. Yes, they were asking us for figures. When they would draw a line they would ask us to run the figures off [238] for them.

Q. And did you do that? A. Yes.

Q. When I say "you" I mean your staff. A. Well, my staff.

Q. How long did this meeting last, do you know? A. Sir, it could have been—it could have been an hour, or two hours.

Q. And as a result of that meeting, was an amendment offered to the ordinance? A. Yes, sir.

Q. And what was that amendment—was that amendment subsequently adopted? A. Yes, sir, it was adopted.

Q. And the ordinance was subsequently adopted? A. Yes, it was adopted.

Q. At this meeting, this discussion, what personnel of yours or your staff was there? A. Well, we would go in in the meeting, we would get some line, we would go out to our calculator and start refiguring the population. Mr. John Eckert was there and at least in the other room, and Mr. Gregory Smith of my staff was present and available for the counting service.

Q. And during the course of this meeting, it was necessary to recompute the figures because different lines [239] were being discussed? A. Yes, sir.

Q. And were you telling people to change the lines or making suggestions as to the changing of lines? A. No, sir, I wasn't telling them where to change the lines. I had submitted the original plans.

Q. Who were making suggestions as to where lines were to be changed? A. Individual members of the council were discussing it among themselves, these changes.

Q. And then would report the change to you and your staff and ask to compute the figures? A. Yes, sir.

Q. Mr. Pezant, do you or your office have authority to compel the introduction of any ordinances? A. No, sir.

Q. You work at the direction of the City Council? A. I work at the general direction of the City Council, yes sir.

Q. What kind of maps were being used at that meeting, do you recall? A. The only map I recall—well, the concept may be still on the wall or folded up at that time, no ordinance had been introduced, but to the best of my knowledge, the map that was being used was the map that showed the ordinance [240] that was introduced which is not on the wall, as I understand.

Q. Were there any other reference materials or maps available? A. Well, sir, there were blank maps showing the wards and precincts or the city of New Orleans.

Q. Was there a map used at that time that illustrated the intensity of voter registration by race in the city of New Orleans? A. It was available in the office, sir, and I don't know if it was being used in that particular room, but it had been seen previously by almost all of the members of the City Council, both the population intensity and the voter registration intensity.

Q. Was it on the wall in that room? A. I don't know whether it was on the wall, sir, or if it was behind a table. We have a number of maps, and maybe Mr. Eckert knows better than I do, but I don't recall it being on the wall.

Q. Do you recall it being used during that meeting? A. I can't say for certain, Mr. Shurtliff. It had been seen prior to that meeting by most of the members of the City Council.

Q. What was the purpose of that map, Mr. Pezant? A. Well, sir, we are an information agency of the city government and we felt that it was a very good idea to

[241] draw a map showing population intensities by race and voter registration; by race because both of these factors as I understood the instructions from the City Attorney's Office had to be considered in submitting a plan to the U.S. Attorney General.

Q. Earlier when you were discussing the problem with District E, you said that District E consists under the present plan of apportionment entirely of Ward Nine, is that correct? A. That's correct.

Q. And that was over-populated by some sixteen or eighteen thousand persons? A. Yes, sir.

Q. So it was necessary to make some change in order to equalize the population? A. Yes, sir.

Q. And you stated that in the preparation of concepts, you considered making changes in two areas, is that correct? A. Yes, sir.

Q. And what are the racial identities of those two areas in the city? A. As we drew the two areas, the racial identity is generally balanced between whites and blacks on the portions that were being considered for change.

Q. Are they separate neighborhoods, or are they [242] totally integrated neighborhoods in racial composition? A. The section along the riverfront that would be represented by the line that we drew is substantially integrated. However, there would be perhaps more whites toward the riverfront and more blacks towards the northern part of that little section.

The neighborhoods of Pontchartrain and Gentilly Woods were originally developed; one is a black neighborhood and one is a white neighborhod, but there is considerable integration in the Gentilly Woods neighborhood, to my knowledge.

Q. Did you consider moving just one or the other of the Gentilly Woods, or Pontchartrain Park? A. No, sir.

Q. Why? A. Well, again, I thought that I—if I drew and took out an all black or all white neighborhood, this came very close to gerrymandering in favor of race.

Q. Why did you consider that? A. Well, sir, it certainly affects the racial makeup of District E if I deliberately carve out a section of that district which is all black or all white.

Q. But if you take out approximate equal numbers, at least, in District E—— A. At least District E, and basically, it has the same racial makeup that it had before the change, and if we [243] transfer an equal number of blacks and whites to District D, it doesn't materially affect the racial makeup of that neighborhood, either.

Q. Was that your desire? A. My desire, sir?

Q. Yes. A. I thought it was a proper way to redistrict.

Q. And this was built into the concept that you designed, your understanding of a proper way to redistricting? A. This was part of it, yes.

Q. And in the drawing of the four plans submitted to Councilman Moreau the second time after the first ordinance had been objected to by the Attorney General, you drew four additional plans for Councilman Moreau to consider . . . A. We drew three additional plans, and we submitted the NAACP Plan and submitted three variations of those plans.

Q. And during the drawing of those plans and those variations, did you consider as you had previously, leaving undisturbed the general racial composition of districts as a desirable end? A. Yes, we still thought it was desirable; however, the NAACP Plan does take on a different configuration between these Districts D and E. It travels along and parallels to the Mississippi River and it removes generally the places, the white portion, the white neighborhoods of that area into [244] District D, and the black neighborhoods would go to District E.

Q. What would be the result of that placement in terms of District E and D? Would it . . . A. It tends to make District E a white district and it—to the best of my knowledge, it changes the population figures and gives them a majority black population to District E.

Q. To District E? A. Yes.

Q. And makes a white majority district of District E? A. D.

Q. And in their plan did they follow traditional historical boundaries in making that division? A. We though they did generally.

Q. And when you say "we", you are including you and your staff? A. My staff and I, yes, sir.

Q. So you submitted this plan to the Councilman Moreau? A. Yes, sir.

Q. And you felt that it did not contravene any of the factors that you though important in drawing a redistricting plan? A. Well, it contravened that one factor and that one area, but then again, we felt that the fact that the NAACP [245] Plan, we felt that it had a reasonable chance to receive approval of the Justice Department.

Q. What do you mean by "reasonable chance to receive approval of the Justice Department"? A. Well, there was some community support for the NAACP Plan and we thought—my staff thought it was a fairly good plan and on that basis we felt that it had a fairly good chance of receiving approval from the Justice Department.

Q. What impact, if any, did the plan, the NAACP Plan, have on incumbent councilmen? A. It had the impact of placing two incumbent councilmen in one district.

Q. Did you think that this was an adverse feature of that plan? A. Yes, sir. We thought it was an adverse feature, but not a paramount consideration.

Judge Waddy: Which district was that?

Witness: District C, sir.

By Mr. Shurtliff:

Q. You nevertheless submitted to Councilman Moreau. A. Yes, sir.

Q. Did either of the other two plans that you submitted to Councilman Moreau place two or more incumbent councilmen in the same district? A. One other plan.

[246] Q. So that two of the four plans did place two incumbent councilmen in the same district? A. Yes.

Q. And the plan accepted by the City Council ultimately did not, is that correct? A. That's correct.

Q. Did Councilman Moreau ever express to you the reasons why he selected the one plan over the other three plans that you submitted to him? A. Not to my knowledge.

Q. He never expressed an opinion as to those other plans? A. No, sir, not to my knowledge.

Q. Did he ever say anything to you about the fact that two of the plans placed two or more incumbent councilmen in the same district? A. Perhaps at an earlier time Councilman Moreau expressed a purpose not to place two councilmen in the same district.

Q. Before you submitted the four plans to him? A. It is possible it was before, sir.

Q. Is it equally possible it was after? A. It's possible.

Q. If it were before you submitted the plans, why did you nevertheless submit two plans to him that had that [247] impact? A. Again, we thought that the NAACP Plan or variations of that plan had a chance to be approved by the Attorney General, sir.

Q. A reasonable chance? A. Those are my words, "reasonable".

Q. Did you think it had an excellent chance? A. Sir, I don't—I couldn't say an excellent chance. I don't know what the—I am not familiar with the Justice Department of the United States.

Q. Were you familiar with the letter received by the City Attorney's Office in reference to the first plan? A. Yes, sir, I read that letter.

Q. And do you recall what that objection was based on? A. Yes, sir, that objection was based on the fact that the plan diluted black voting strength by placing blacks in combination with white in other districts.

Q. And in the drafting of the second ordinance, did you seek to avoid that result? A. Yes.

Q. And could you tell us the differences between the first plan and the second plan in that regard? A. I would

like to look at the figures, Mr. Shurtliff, but to the best of my knowledge, the District B as contained . . .

[248] Judge Robinson: First, just a moment. Is there any objection to this witness looking at the figures?

Mr. Shurtliff: No, sir.

Mr. Treese: Would the Court indulge us for a moment?

Judge Robinson: Certainly.

(Counsel conferred privately off the record.)

Mr. Treese: We have stipulated with respect to these figures, Your Honor.

Judge Robinson: Are these figures in Paragraph 16 of the complaint?

Mr. Treese: No, these would be a new presentation, Your Honor, it would be a new exhibit. Actually, the Government had prepared these in advance of trial and it seems to be coming in now.

Judge Robinson: It might be helpful to the Court if the Court had an opportunity to see these figures and to understand just what these figures are. Do you have extra copies?

Mr. Treese: Yes, I do.

Judge Waddy: Let it be marked.

Mr. Shurtliff: 3 for the Court. (passing documents up)

Judge Robinson: Let them be marked.

Judge Waddy: The original could be marked and [249] then the copies for us.

Deputy Clerk: Do you have the original, sir?

Mr. Treese: These—no, I don't. These were taken as copies supplied by the Government to me. I made Xerox copies of the copies that I had.

Deputy Clerk: (Addressing Mr. Shurtliff) Do you have the original?

Mr. Shurtliff: The original of these figures are attached to Defendant's Exhibits 2 to 7. We have copies of those figures in a packet, but they are really from exhibits 2 to 7.

Mr. Treese: As I understand the compilation . . .

Judge Waddy: Just mark them.

Deputy Clerk: They have been marked, Your Honor.

Mr. Treese: As I understand it, these figures will appear as a legend on an acetate exhibit that the Government will later offer, but these are the meaningful statistics relating to each of the plans that will be presented into evidence in the trial of this case. You will see that—I believe there are five (counting documents)—six, I'm sorry. It should be six pages attached to each packet.

Mr. Shurtliff: If it would be more convenient for the Court and the parties, we could ask that this be labeled—this compilation of these statistics be labeled exhibit 1-A or ad seriatum.

[250] Judge Robinson: As Defendant's Exhibit.

Mr. Shurtliff: Right.

Judge Robinson: Very well. Give it whatever number you like in the event you have a prior order in which you want to present them, and it is Court's understanding that these figures are stipulated to, so why can't they go into evidence at this point?

Mr. Treese: Agreeable.

Judge Robinson: Is that agreeable, gentlemen?

Mr. Shurtliff: That is agreeable.

Judge Robinson: The Clerk will mark the exhibit.

Deputy Clerk: Defendant's Exhibit Number 26 marked and received into evidence.

Judge Waddy: Number 26?

Deputy Clerk: Yes, sir.

(Defendant's Exhibit Number 26 was so marked and received into evidence.)

Judge Robinson: You may resume, Mr. Shurtliff.

By Mr. Shurtliff:

Q. Could you therefore, Mr. Pezant, describe the differences in that respect between the first and second plans? A. Yes, sir. In the first plan, Councilmanic District B . . .

Judge Robinson: Now which page are you on, Mr. Pezant?

[251] Witness: Sir, I am reading the 1972 redistricting plan, ordinance 4796.

Judge Robinson: Very well. You may continue.

Witness: Well, in the first plan, 4796, Councilmanic District B contained a black population of 58.8 percent, but the voter registration was 45.2 percent. In the final ordinance that passed, those same figures for District B, the black population would have increased from 58.8 to 64.1; the voter registration figures have increased from 45.2 percent to 52.6 percent.

At the same time District E contained the same black population figures of 50.6 percent in each plan and the voter registration increased from 41.0 percent to 43.2 percent.

Therefore, two of the districts had increases in black population and/or voter registration. There was not—there was not one district that had a majority of black voter registration in the first plan, but District B had a majority black voter registration in the second plan and increased the voter registration of District E.

Q. Are there any other differences? A. Well, yes, sir. The other figures have to change, too. If you increase—if you increase one, they certainly have an effect on the other.

Q. Are there any other differences on the plans insofar as they relate to the capacity of the city to effectively [252] govern and provide city services? A. Would you repeat that question?

Q. Does the difference in plans have any impact on providing the government services, or on the government structure of the city, itself? A. I fail to understand your question.

Q. Well, I will withdraw the question.

And trying to overcome the objection of the Attorney General, and come up with a plan which would first pass the City Council, and secondly receive the approval of the

Attorney General, did you during the drawing of those plans consider whether or not to place two or more incumbent councilmen in the same district? A. We considered it, but it was not a paramount issue.

Q. What were paramount factors at that time, focusing on the second plan? A. Again, sir, the important or the paramount issues that we thought had to be considered were population, racial dilution, historic boundaries and natural boundaries.

Q. And your definition of "racial dilution" was a carryover from—was it the same definition that you had when you were working on the first plan; that is, not to unduly affect the racial composition of any district? A. Or not to deliberately divide the concentration [253] of racial population of voter registration.

Q. Were there any geographic changes in District E between the first and the second plan? A. I believe District E, Mr. Shurtliff, was the same in both plans except one minor precinct down at the riverfront. As the second ordinance was introduced, there was one additional precinct of District E that was contained in it, and as I recall, the Council straightened out the line and made the lines straight, one precinct, I believe.

Q. One precinct was added to District E in the second plan, or taken out? A. In the introduction of the ordinance, Mr. Shurtliff, there was one additional precinct . . .

Judge Roibnson: Is there any objection to the witness going over and taking a look at the map to assist in his answer?

Mr. Shurtliff: No, Your Honor.

Judge Robinson: You may do that.

(Witness withdrew from the stand and approached the board.)

Witness: Sir, to the best of my knowledge, this precinct eleven (indicating) which goes like this was placed in District D in the ordinance that was introduced. As the ordinance passed, precinct eleven was put back in E and

the line was drawn straight like this (indicating) and I believe [254] the factor was that with this precinct in E, E was slightly larger than D and within D, D was slightly larger than E.

In other words, it was a precinct that very slightly changed the population and it has no other significance that I know of. I believe one member of the Council, Mr. Lambert, had first wanted to place this district in D and eventually the Council, or to the best of my knowledge, that's the only difference between E, as it was in the first plan,——

Judge Robinson: Mr. Shurtliff, understood your question had to do with changes in the plan that ultimately eventuated the plan now before the Court, am I correct?

Mr. Shurtliff: Yes sir.

Judge Robinson: The witness has made his references to a different map.

By Mr. Shurtliff:

Q. This is it, Mr. Pezant (indicating), which of these is the plan under consideration by the Court now?

Judge Waddy: It has been stipulated that this is the plan, this one over here (indicating), is the plan before the Court.

By Mr. Shurtliff:

Q. And this was the first plan (indicating) presented to the Attorney General? A. Yes sir, I thought your question was did E change. Really, E did not change. I told you what [255] changes had been considered.

Judge Robinson: Did E change on either of the two plans submitted to the Attorney General?

Witness: No sir.

Mr. Shurtliff: May it please the Court——

Judge Robinson: Yes.

Mr. Shurtliff: —I believe I may have misled Mr. Pezant, and he likely misunderstood the thrust of my question. He described the changes, and I believe I am correct, that took

place on consideration of the second plan by the City Council, between the plan that was introduced and final adoption by the Council.

Judge Robinson: The second plan.

Mr. Shurtliff: Right.

Judge Robinson: Is that correct, Mr. Pezant?

Witness: Was there a change in E, sir?

Mr. Shurtliff: Between—Councilman Moreau proposed an ordinance, the second plan——

Witness: Yes.

By Mr. Shurtliff:

Q. The change that you just described went to an amendment of his proposed ordinance, did it not? A. Yes sir, I believe that was an amendment, an ordinance.

Judge Waddy: Now did that amendment carry?

[256] Witness: Yes sir, I would again, prefer to have Mr. Eckert answer the details; he drew the lines.

By Mr. Shurtliff:

Q. But as a result of that amendment passing, District E of the second plan is exactly the same as the District E in the first plan? A. It's the same in population, Mr. Shurtliff.

Q. It's the same geographically? A. It is the same geographically.

Q. So the differences you described here a moment ago between the first plan and second plan in your references to differences, affect the difference in statistics, is that not correct, rather than a change in the plan? A. Are you referring to a difference in these two statistics?

Q. Right. A. The population of District E is the same in both plans, Mr. Shurtliff, although, I see——

Jundge Robinson: The difference of one?

Witness: The difference of one, yes sir. That could be the result of a correction in a census figure. Now the voter registration figures show a significant change.

By Mr. Shurtliff:

Q. What caused that change? A. What caused that, Mr. Shurtliff? The difference [257] of voter registration changes mostly, sir. The black voter registration—and I don't have the figures before me—the black voters registration city-wide would have increased since that—since those first figures were—in other words, you are looking at '73 voting figures against '72 voting figures, or voter registration figures. To my knowledge, there have been no change in population figures that one person, Your Honor, I can only say that is something in transcribing because a precinct would contain far more.

Mr. Shurtliff: Geographically, let's just focus on geography——

Judge Robinson: Is this still the same matter, Mr. Shurtliff?

Mr. Shurtliff: Yes sir.

Judge Robinson: Now I thought what you were trying to find out—and you let me know whether I am in error—is whether or not District E had the same configuration in both of the plans submitted to the Attorney General. Is that what you are driving at?

Mr. Shurtliff: Yes.

Judge Robinson: And I understood the witness to answer that question in the affirmative. Is that right, Mr. Pezant?

Witness: Yes sir.

Judge Robinson: What more do you need, Mr. [258] Shurtliff?

Mr. Shurtliff: Any other districts.

Judge Robinson: Very well.

Mr. Shurtliff: Very quickly, which other districts remained the same geographically, and I am trying to avoid the problem of statistics.

Judge Robinson: Very well.

Witness: Sir?

Judge Robinson: What is your question?

By Mr. Shurtliff:

Q. Which districts, A, B, C, D, and E, are the same in the first plan submitted to the Attorney General and in the second plan geographically the same? A. Sir, I guess that three of four of the other districts changed as a result of (1) placing Algiers in District C——

Judge Robinson: Did you say you guess?

Witness: Well, sir, I——

Mr. Stoner: Your Honor, might I just call the Court's attention that the exhibits clearly show that the first A, B, C, and D each changed geographically.

Judge Robinson: I think we might be helped by testimony on it. Let me make this suggestion, we have arrived at the point at which we normally take the recess. Perhaps, it would be well to break. Mr. Pezant, would you during the [259] luncheon period acquaint yourself with whatever data or other information you might feel necessary to answer this question and be prepared to answer the question when we resume.

Witness: Yes, sir.

Judge Robinson: Is that agreeable?

Mr. Shurtliff: That is agreeable, Your Honor.

Judge Robinson: At this point, Marshal, the Court will stand in recess until 1:45.

(Whereupon, the Court recessed at 12:30 p.m.)

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AFTERNOON SESSION

(The three-Judge Court reconvened at 1:49 p.m.)

Judge Robinson: Mr. Shurtliff, there was a question pending. It, perhaps, would be helpful to the witness if you restate the question.

(Witness has resumed the stand)

By Mr. Shurtliff:

Q. Could you, Mr. Pezant, tell us the differences, geographic difference, between the first plan submitted to the

Attorney General and the second plan as to which districts were affected geographically? A. There were three districts affected geographically, A, B and C, to the best of my knowledge, although, you have taken the map down from the wall, have you not. Districts D [260] and E were the same.

Q. Were Districts D and E the same in the other plan submitted to Councilman Moreau at the time you submitted what became the second plan to him? A. No sir, I instructed Mr. Eckert to draw the plans as requested by Councilman Moreau and give him some general supervision, but he drew and gave him some general supervision, but he drew those details and I am not qualified to answer that. I gave overall supervision, but to the best of my knowledge, those districts would have been changed.

One plan included the NAACP plan and another alternate changed three councilmanic districts and one changed two, I believe, and one was the plan that was adopted.

Q. You stated that you gave Mr. Eckert the job of drawing these plans? A. Yes sir.

Q. Did you give him guidelines at that time? A. Yes sir.

Q. And what were the guidelines that you directed specifically to the preparation of those plans? A. Mr. Moreau —Councilman Moreau would like to consider the possibility of the NAACP plan, and perhaps, receive other plans that we thought would be fair and equitable and stand the test of the Attorney General, U.S. [261] Attorney General.

Q. Did you further define for Mc Eckert what you meant by the term "stand the test?" A. No sir, I didn't think I had to. Mr. Eckert had been in this business almost from the very beginning, and he had read the letter that your office sent to the City Attorney and I read that letter.

Q. Mr. Pezant, how many employees do you have on your staff? A. Sir, I supervise eighteen employees, approximately, and as you know, there are constant changes going on.

Q. How many of those employees are black? A. Two of those employees are black.

Q. What positions do they hold? A. We have a black typist, Stenographer II, typist-clerk too, and we have a black man who works for us part-time during the day as a chauffeur and then he works for the United States Postal Department in the afternoon and evenings.

Q. Did either one of those individuals work on drawing redistricting plans? A. Drawing redistricting plans? Miss Zenita Thomas, the typist, certainly—she didn't design the plans, but she certainly typed an awful lot of the plans, and you know, prepared an awful lot of the information.

[262] Q. She did not participate in the drawing of the plans, though? A. No sir. We did have a black administrative analyst for a period of time. I don't know the exact rates; this young man was referred to my office by the Public Employment of the City of New Orleans; that is a federally-funded program; and he was hired by me and spent about three months in my office and he came to me and told me one day that he was happy to have worked for us, but that he had a job in San Francisco which, I believe, paid three or four hundred dollars more than we were able to pay.

Q. How long did he work with you? A. About three months.

Q. What period of time was that? A. Sir, to the best of my knowledge, it was in '71, in the year 1971, but I can't be sure. I am almost positive it was in the year 1971.

Q. Did he work on drawing redistricting plans? A. Yes, he worked on drawing plans, you know, computing information, determining information, making the distinctions.

Judge Robinson: Were they these plans, the plans that are discussed in this case?

Witness: Yes sir, the information associated with those plans. He was a beginning analyst comparable [263] to the position that Mr. Eckert occupied at that time and com-

parable to the position that Mr. Gregory Smith occupied at that time, but they have since been promoted.

By Mr. Shurtliff:

Q. And this was in the period of 1971? A. To the best of my knowledge.

Q. And this was before the third-count census data became available, is that correct? A. I am not sure whether it's before or after, you know, my personnel records would show that; I don't have that information.

Q. Was this during the period you were drawing conceptual plans? A. Yes, I believe it was.

Mr. Shurtliff: I have no further questions.

Thank you, Mr. Pezant.

Judge Robinson: Mr. Halpin.

Cross-Examination

By Mr. Halpin:

Q. Mr. Pezant, I believe you stated that you have a Masters in Political Science and are working on a Doctorate in Political Science? A. Yes sir.

Q. Are you generally familiar with the racial composition of the City of New Orleans and the general location [264] of black and white population concentrations within the City? A. I became familiar with it, sir, when we prepared the intensity maps of population and voter registration. I became quite familiar with it.

Q. From your knowledge—how long have you been working for the City Council? A. Since 1956.

Q. And with your educational background and your long experience in working with elected office holders, is it your testimony that you cannot state to the Court that politicians seek to—seek election and wish to win elections? A. I cannot.

Q. Can you say that?

Mr. Treese: I think I would like to voice an objection, Your Honor, to that. That wasn't my memory of the testimony on direct examination.

Judge Robinson: Well, this is cross-examination.

Mr. Treese: I understand, but the way it was phrased, it sounds like has he testified to that.

Mr. Halpin: That is not what my question——

Judge Robinson: I didn't understand the question that way, but to be clear about it, Mr. Halpin, how about rephrasing the question.

Mr. Halpin: I will rephrase the question.

[265] By Mr. Halpin:

Q. Is it not true that politicians seek to be elected and that is one of their primary goals? A. Well, sir, when a man qualifies for candidacy to political office, I am certain he seeks to be re-elected.

Q. And doesn't it also follow from that that an encumbent politician, an incumbent elected official would ordinarily seek to run in a district from which he would have a good opportunity of being elected? A. You are asking my opinion of that?

Q. Yes. A. Yes sir, I think that would be normal.

Q. And is it not also true that, therefore, it would be to such a politician's advantage to be placed in a district in which no other incumbent on the same legislative body lives? A. Is it to his advantage?

Q. Yes. A. It would be to his advantage, but I think the question overlooks another aspect, Your Honor.

Judge Robinson: You may complete your answer.

Witness: I think the question overlooks the aspect that after a number of years in serving in a particular constituency, there develops some rapport, or knowledge of the needs of the constitutents of that area, too, in addition to [266] the fact of running against another incumbent. And when you place two incumbents in one district, you are in effect removing an incumbent office holder from his constituency that he has served for a period of time, in some cases.

There is one councilman who has been on the Council now for, I believe, eleven and a half years, I believe.

By Mr. Halpin:

Q. Now you stated that you are generally familiar with the racial population and voter registration distribution in the City of New Orleans as per the maps which were introduced, is that correct? A. Yes.

Q. Would you say that in the City of New Orleans from looking at this map which is Plaintiffs' Exhibit 1 (indicating), that the black population in the city is, in fact, concentrated in what is known as the Central City area? A. There is a black concentration in the city area, yes sir.

Q. And that generally, the area referred to as the Lakefront is a concentration of white population? A. Yes sir, with the exception of certain areas like Pontchartrain Park.

Q. Is it not true that Pontchartrain Park is a relatively small black subdivision relative to the rest of what is generally referred to as the Lakefront Area? [267] A. I don't know the population of the Pontchartrain Park, Mr. Halpin, but—I really don't know the population.

Q. But the maps then with Pontchartrain Park on it will indicate the true effect of how large this area is? A. As of 1970.

Q. Now as—From your study of political science, are you generally familiar—do you have a sub-field in public administration in your studies in political science? A. I am inclined to specialize in urban political systems.

Q. For your Ph.D. program, don't you have certain areas, is there any other area besides urban relations as one of the areas? A. Well, some require that I take a varied background. I've taken a course in urban law; I've taken courses in political theory, various courses, but my specialization at this time is in urban political systems.

Q. Okay. Are you familiar with the concept in political science which is sometimes referred to as anticipatory by the bureaucracy, which theory generally is that members of bureaucracies who serve decision-making public

officials tend to anticipate those decisions of the public officials? A. Just repeat the latter part, sir.

Judge Robinson: Would you want the reporter to [268] read it back? Would you want to reframe it, or what?

Mr. Treese: I would object to it. Would you reframe it?

Mr. Halpin: I will reframe it.

By Mr. Halpin:

Q. Are you generally familiar with the theory in political science which is sometimes referred to as anticipatory decision-making by the bureaucracies which theory holds that bureaucrats tend to anticipate the decisions that would be made by the elected officials for whom they work? A. Generally familiar with that theory, but you have only expressed part of that.

Q. Would you care to expand? A. Office holders also indulge in anticipatory behavior in that they sometimes anticipate what their constituents may desire and tend to act in that manner.

Q. Now is it not true that the Council was in your opinion very likely to defeat any plan which contained districts in which more than one incumbent reside? A. That was a possibility, sir, I think I have testified to that.

Q. Do you think that it was only a possibility, or did you fully anticipate that any plan which put two incumbents in one district would be defeated? A. No sir, I did not fully anticipate it as a [269] foregone conclusion that it would be defeated. I anticipated this as a possibiilty.

Q. And therefore, you didn't submit any serious plans to the Council in which more than one incumbent was in any given district, is that correct? A. We did it in the second submission, Mr. Halpin.

Q. But these were defeated, were they not? A. Defeated, sir? Well they were not introduced. There were two of the four plans submitted to Councilman Moreau on the second ground that included two incumbents in

one district. When you say defeated, Mr. Moreau selected one of the four plans. I don't know your definition of defeated.

Q. So your testimony is that Mr. Moreau did not even consider these other plans worthy of being submitted to the Council? A. How can I tell you—well, do you want to say something, Mr. Treese?

Mr. Treese: That's all right.

Witness: (continuing) Mr. Moreau did not tell me that these other plans were not worth their consideration. There were four plans submitted to Mr. Moreau, and he chose one of those plans. He did not tell me what was wrong with the plans, or anything else.

Q. Are you—From your experience, are you generally aware of where each of these seven incumbent [270] Councilmen live? A. Yes, I am.

Q. Are you specifically aware of their addresses? A. Sir, not their street addresses, but I am generally familiar in the precincts in which they live.

Q. And you did take that into consideration in drawing the plans? A. Yes sir.

Mr. Halpin: Just a moment (addressing one of counsel seated at Defendants' table). Do you have the map?

May it please the Court, if I could ask the witness to step down since the map is at a low level.

Judge Robinson: Very well. (addressing witness) Step down.

(Witness withdrew from the stand and approached the board.)

Judge Robinson: Are you going to have this marked?

Mr. Halpin: They are not introduced in the testimony yet.

Judge Robinson: Well, why not just mark them for identification so the record will be clear?

Mr. Shurtliff: May Your Honor please, they are marked, we have not introduced them. They are Defendants' Exhibits.

[271] Judge Waddy: Have they been marked for identification?

Mr. Shurtliff: They have, Your Honor.

Judge Waddy: The top page has not been marked.

Mr. Halpin: Well why don't we introduce the overlay map——

Judge Robinson: First, let's get it marked. What is your pleasure with reference to an identifying symbol? You said that you had done something, Mr. Shurtliff, to identify it. Do you have a letter, number or something?

Mr. Halpin: As I understand it, Your Honor, the overlay which I am seeking to introduce has not been numbered, and we would like to number that Defendants-Intervenors Number 1.

Judge Robinson: All right. Very well.

Deputy Clerk: Defendants-Intervenors Number 1 marked for identification.

(Defendants-Intervenors Number 1 was so marked for identification)

By Mr. Halpin:

Q. Mr. Pezant, I refer you to an overlay of the standard ward-precinct map of the City of New Orleans (indicating) which has been labeled for identification Defendants-Intervenors Number 1. Does that overlay generally accurately represent the residence of the present incumbent [272] members of the City Council? A. (Examining the exhibit) Sir, you say generally accurately?

Q. Yes. A. To the best of my knowledge, this does depict the residences of the incumbent City Councilmen.

Q. And the—— A. Although I understand Councilman Lambert might recently have been changed.

Q. Now it is true that all the present incumbents on the City Council are white, is that not correct? A. Yes sir.

Q. And now is it not true that in order to place each of the five incumbents who are presently elected from

districts into different districts, it is easier to accomplish this by drawing districts vertically, that is, from the River to the Lake? A. Is it easier to——?

Q. Place them in separate districts by drawing the districts in a vertical fashion from the River to the Lake? A. To a great extent it is, except down here (indicating), sir,——

Q. You are refer to Councilman Sapir's residence which is the only councilman which lies in the southern part of the city? [273] A. These (indicating) traditional lines don't go to the Lake.

Q. Now is it not true, Mr. Pezant——

(Witness resumed the stand)

Q. (Continuing)—Is it not true, Mr. Pezant, that the primary reason for drawing these district lines from the River to the Lake was to assure that each of these five incumbent Councilmen elected from districts would be in a different district? A. No sir, I said before it is not the primary reason; it was one of the considerations, insofar as it did not contravene the other considerations.

Q. And those other consideration factors? A. The population factors, the natural boundaries, the historic boundaries, and the question of dilution of minority voting.

Q. Now is it not also true that what you have said about where black population is located in New Orleans, and this is demonstrated by the maps and data in evidence, that most frequently if you draw lines in a vertical fashion from the River to the Lake, you are going to dilute black voting strength? A. If you draw lines from the River to the Lake, did you say the result is a dilution of black voting strength?

Q. That is the question. A. Not necessarily, Mr. Halpin (repeating), not [274] necessarily.

Judge Robinson: I thought your question inquired as to whether this was ordinarily the consequence?

Mr. Halpin: Yes.

Judge Robinson: Well, Mr. Halpin——

By Mr. Halpin:

Q. Would it ordinarily be the consequence when you draw districts vertically from the River to the Lake to create districts in which there is a white majority? A. I don't know if that is true or not.

Q. You do know where the population, black and white, is located within the city, though, don't you? A. Yes, I do from that map.

Q. And it is true that the plan you draw and which is before the Court today, in fact, does have that result of having—most four of these districts having a white majority, is that not true? A. Only three of the districts have a white majority.

Q. White voter registration majority? A. Only four of the districts do have a white voter registration majority, but I——

Q. Do you——

Judge Robinson: Let the witness finish.

Witness: You are overlooking a very important fact, Mr. Halpin, that—and we have—I have looked at [275] the age districts of the City of New Orleans, and the black population is very young in the City of New Orleans.

Judge Robinson: Is very what?

Witness: Sir?

Judge Robinson: I didn't get one word. You said the black population is very——?

Witness: Very young, young compared to the white population, Your Honor. There are statistics available from the 1970 Decennial Census which would show this.

By Mr. Halpin:

Q. Is it not also true along that line, Mr. Pezant, that there has also been a long history of discrimination against blacks in voting registration in New Orleans? A. Sir, I am not familiar with the operation of the Voter Registrar's Office in the City of New Orleans. I have never had anything to do with that office.

Q. You have lived in New Orleans, however, and worked for the Council since 1959, was it? A. I have lived all my life in New Orleans.

Q. And you are not familiar with the various lawsuits and complaints that were raised about blacks not being allowed to vote in New Orleans through their precincts, and so on? A. Sir, I have read this in newspapers, and things of this nature, but I have never looked into the operations [276] of voter registration. I have generally read this information that you are referring to.

Q. Now did you draw any plans for submission to the City Council or for any other purpose which plans were not drawn, the district lines, were not drawn in a vertical River-to-Lake fashion? A. Generally? You said, "generally drawn in a River-to-Lake fashion?

Q. Yes. A. I didn't draw any plans in—That was strictly east-west, and the only time that word ever came up was in the second rejection of the Attorney General, Mr. Halpin.

The first letter that we received from the Attorney General failed to mention any east-west lines.

Q. It did talk about dilution of black voting strength, though, didn't it? A. It talks about the dilution of black voting strength.

Q. Did you at any point, even after the second letter of objection, that is, the letter objecting to the plan in question today, attempt to draw a plan with lines in an east-west fashion, or at least not in a north-south fashion? A. Mr. Halpin, the second plan was rejected in May of 1973, and upon that rejection, the City Council met and considered the possibility of a court action and there is [277] no need to draw any more plans when you are making an attempt to have the plan that was adopted validated.

Q. Is it not also true that if you did draw plans, say, in an east-west fashion, that it is quite likely that all but one of the present Councilmen could be located in the

same district? A. If you set out to do that deliberately, Mr. Halpin, you could possibly do it.

Q. I am asking that wouldn't that be the ordinary result of using an east-west fashion of drawing district lines? A. That all but one of the Councilmen would be included in one councilmanic district? I wouldn't consider that to be an ordinary result; it might be a result that two incumbent councilmen would be in one district. If you are referring to the councilmen-at-large, it doesn't make any difference what districts they are in.

Q. But given the location of the residences of the councilmen-at-large, is it not true that of the seven members, it would be quite likely drawing lines either east or west, or in a perfectly compact square pattern, that four of those people would fall into a single district? A. If you are including the two councilmen-at-large, it's possible.

Q. Isn't it likely? [278] A. It is likely.

Q. But if you draw lines north to south in the fashion that you did, you can avoid putting more than one councilman in a district, is that correct? A. You can also draw north-south lines that include two councilmen in one district.

Q. From your knowledge of the topography of the City of New Orleans, wasn't it obvious to you that when you drew these district lines in a north-south River-to-Lake direction that you were most likely to come up with districts which had a white voter registration majority? A. That you would most likely come up with a—sir, the voter registration, as I recall the last figures, the voter registration percentages in New Orleans are thirty-five to thirty-six percent black of the total voter registration. Now I don't think it necessarily follows that you drawing district lines north to south insures that you will have black minorities in each district because there is a minority in the whole city of only thirty-six percent.

Q. Is it not true that in your words, you would have to make a considerable effort to create black majority dis-

tricts if you did it in a north-south fashion? A. You would have to make a considerable effort to——

Mr. Treese: Your Honor, again, I must object. [279] I don't recall the witness in his words having——

Judge Robinson: Mr. Treese, before I can rule on your question, I have to understand what the question is. Restate the question just for my edification.

Mr. Halpin: I can restate it without that part, Mr. Treese. Without the part Mr. Treese found objection to.

Judge Robinson: Don't answer the question until I instruct you one way or the other.

Mr. Halpin: The question is, wouldn't you have to make a considerable effort in drawing lines north-south to result in any district having a black voter registration majority?

Judge Robinson: I have the question, and the objection, Mr. Treese?

Mr. Treese: As reframed, it is fine.

Judge Robinson: Very well. (Addressing witness) You may answer it.

Witness: Well, sir, in drawing north-south lines, you definitely can and it would result in a creation of a distinctly black district in District B. I am following traditional ward lines.

Now we talked before about the population of New Orleans being to a great extent integrated. I didn't have any preoccupation with race that you seem to think that I had when we set about to draw these lines.

[280] Mr. Halpin: I don't believe that is the question.

Judge Robinson: Let's make the question more specific.

Mr. Halpin: The question is, don't you have to make a considerable effort in drawing north-south lines—I will ask it this way this time—to create more than one majority black district by voter registration?

Witness: You would have to make a considerable effort. You——

By Mr. Halpin:

Q. Now you indicated on—that Mr. Salatich, the Assistant City Attorney, supplied you with a digest of criteria which would prevent dilution of black voting strength, is that correct?

Mr. Treese: Again, I must object, I don't recall the testimony of this witness using the word "criteria", "digest", or any of those words.

Mr. Halpin: I will ask the question whether that is true, not whether what he stated before.

Judge Robinson: Well now, just a moment. Mr. Pezant, do you understand the question?

Witness: Yes, I understand the question.

Judge Robinson: You may answer it.

Witness: Mr. Salatich presented me with certain [281] material that he thought was pertinent to our redistricting effort, and it contained what I thought were guidelines of the U.S. Attorney General's Office, but apparently, they were some sort of rules for considering redistricting efforts, or reapportionment efforts. I studied those rules; I also received from Mr. Salatich some decisions, I believe, in the case of Judge West in the Eastern District of Louisiana, and to the best of my understanding, Mr. Halpin, that the procedure was to go about the business of redistricting and to be careful that the results of the efforts did not dilute black votes, but I also understood that there was no need for a conscious effort to deliberately draw black districts.

Q. Okay. You stated that one of the things that was available to you which you followed as a criteria—strike that. Is the import of what you just said, that one of the criteria that you followed was Judge West's decision? A. I just said that that was one of the—part of the material submitted to me.

Q. Are you not aware that in Judge West's decision, he states that—relative to the Louisiana Legislature, that it was these traditional boundaries which resulted in only two black legislators being elected this century and that one succeeded the other, to the effect that these traditional

boundaries did not balance out against such dilution of voting strength?

[282] Judge Robinson: Just one moment, Mr. Pezant.

Mr. Treese: I would like to object to the form of that question. Either we read from the opinion, or we have Judge West here, who said it; but for the synopsis presented by counsel, I don't think it's fair to summarize to this witness that way. I don't think it's the best evidence of what was said in that decision.

Judge Robinson: Well——

Mr. Treese: And I object for that reason.

Judge Robinson: I took it that Mr. Halpin's effort was to identify for the witness the portion or portions of the opinion to which his question was related. Am I correct?

Mr. Halpin: That's correct, Your Honor,——

Judge Robinson: But I am not certain that the witness understood it (addressing witness). Did you understand the question?

Witness: Yes, sir, I understand it, but I wasn't familiar with all of the decisions, Your Honor.

Judge Robinson: Doesn't that take care of your objection, Mr. Treese?

Mr. Treese: Fine, Your Honor.

Judge Robinson: Very well.

Judge Waddy: The question was whether you were familiar with it.

[283] Witness: No sir, I am not familiar with the entire decision.

By Mr. Halpin:

Q. So you did not carefully read that decision in order to determine how to avoid diluting black voting strength in New Orleans, did you, Mr. Pezant? A. I did not read that entire decision, no sir, Mr. Halpin.

Q. What part of the decision were you reading and following? A. May I refer to—or is it available—may I refer to the material that I received from Mr. Salatich? I don't know how handy it is, the availability of it.

Judge Robinson: Gentlemen, let's see if that is——

Mr. Treese: Could you describe it? I don't know what——

Judge Robinson: (Addressing witness) You may leave the witness stand if you can help identify it.

Witness: Sir, my problem is I don't know whether it's in this material, or in some material that my staff has in the other room. But I definitely recall receiving several pages of material from Mr. Saaltich that contained information from Judge West.

[284] By Mr. Halpin:

Q. If I might ask the question this way, to address the Court, I am more interested in Mr. Pezant's perceptions of what stood out to him in this decision than the actual material that he used. The question will stand as what is your perception and your understanding of that decision and the parts of it that you followed?

Mr. Treese: Well, Your Honor, may I be heard on this?

Judge Robinson: Yes. sir.

Mr. Treese: I think the witness already indicated that he would prefer to use the documents that were present at the time.

Judge Robinson: I am going to let him do that.

Mr. Treese: Thank you, Your Honor.

Judge Robinson: Let's see what we can do now——

Mr. Treese: Thank you.

Judge Robinson: —to——

Mr. Halpin: If it would convenience the Court, I could go on to another line of questions while someone finds the material.

Judge Robinson: I think it would be helpful to do so, and the first opportunity we will let you get back to this.

Mr. Halpin: All right, I will proceed to another [285] line of questioning.

Judge Robinson: While we are on this, at the first opportunity, Mr. Pezant, would you give those present here and you mentioned some associates outside of the courtroom in the witness room such assistance as you can to

get the information that you said you wanted to consult. The Court is going to permit you to use that for whatever purpose it may have in refereshing your recollection for the purpose of answering Mr. Halpin's question, or questions on that score.

Witness: Thank you, Your Honor. I would ask Mr. Albert Levey to check with Mr. Jon Eckert for that materiaal if it's not on the desk.

By Mr. Halpin:

Q. Mr. Pezant, relative to your staff, you indicated that there was a black clerk-typist employed by your staff, is that correct? A. Yes sir.

Q. Do you recall approximately the date on which he or she was hired? A. Sir, she would have come into my office, as I recall, in the year 1971, but we do have, you know, we do have personnel changes in my office and I will say to the best of my memory, 1971.

Q Now when there are three individuals who are qualified under Civil Service for a position on your staff, [286] who makes the decision as to which of the three will be hired? A. I do as the appointing authority, Mr. Halpin.

Q. And that decision does not go to the Council? A. The City Council could presumably interenve if they chose to do so inasmuch as they appointed me. They presumably chose to intervent, but I am appointed by them as the Director and I make the staff appointments.

Judge Waddy: Are you appointed from among three, also?

Witness: Yes sir, I am.

Judge Waddy: You are?

Witness: Yes sir.

By Mr. Halpin:

Q. And that selection, presumably, is made directly by the Council? A. By a majority of the Council.

Q. Now you indicated in your—strike that. Is it not true that many of the canals in New Orleans run east to west? A. I know of one or two canals that run east to west, Mr. Halpin.

Q. And is it not true in your earlier testimony you stated that only two canals run north-south? A. Two canals, sir? I thought I depicted each canal than ran north-south, and——

[287] Judge Robinson: He depicted more than two running north and south.

By Mr. Halpin:

Q. Would you—with respect to the canals which run north-south, do those canals also form ward lines in any instance, to your knowledge? A. In one instance, I pointed out the People's Avenue Canal formed a ward boundary. In another case, I pointed out that the Seventeenth Street Canal on the extreme west of the city, not only formed a ward boundary, but formed a parish boundary.

Q. Formed a city boundary? A. Yes, the City of New Orleans, yes, sir.

Q. Now is it not also true that there are many corridors which run essentially east-west in New Orleans, such as St. Charles Avenue, Claiborne Avenue, and so on? A. Mr. Halpin, St. Charles Avenue and Claiborne Avenue not only run east-west, they run north-south.

Q. They generally, do they not—— A. They follow the curvature of the Mississippi River.

Q. Follow the contour of the River as opposed to running from River-to-Lake? A. Some of those avenues, yes.

Q. Now is it your testimony that there is not a [288] single public official in New Orleans whose election district is coterminous with any single ward in the City of New Orleans? A. Once more, Mr. Halpin?

Q. (Repeating) Is it your testimony that there is not a single elected public official in the City of New Orleans whose election district is coterminous with a single ward?

A. Mr. Halpin, if I understand your question correctly, the Councilmanic Ward Nine is in a single ward. There is not an elected official whose district is coterminous with a single ward? There are—The Councilman from District E, at present that district is a single ward, whereas the Councilman from District D has several wards.

Q. Besides those Councilmanic Districts, the two that you referred to, is there any other public official who's in the City of New Orleans whose district is coterminous with a single ward that you know of? A. Not that I know of, unless you consider parish committmen as public officials.

Judge Robinson: Would you hold just a moment.

(The Judge conferred privately off the record)

Judge Robinson: I will ask you to indulge me for just a moment.

(Judge Robinson making an annoucement in open court)

[289] Without identifying anyone in the courtroom, let me give warning on behalf of the Court that persons who are not on the witness stand are not to do anything, to say anything, to indicate by any sign, symbol, or in any other shape or form, anything that might serve as an indication of any answer to a question being put to the witness. I think it is only necessary for the Court to make that announcement, and I hope that it will not happen again.

Now would you repeat your question?

Mr. Halpin: I have no further questions of this witness, except the question which I put to him before which the Court indicated it would allow him to examine his materials on.

Judge Robinson: All right. Well, what is the situation with references to the materials? Are they in the courtroom?

Mr. Stoner: Your Honor, we have not located the papers. My law clerk has gone to find Mr. Eckert.

Judge Robinson: Well, Mr. Stoner, let's leave it that way. Would it be all right—is there going to be redirect examination of this witness?

Mr. Treese: Yes, I have two questions.

Judge Robinson: Well, let's go ahead with those two questions and maybe by that time the papers will be back. Is that agreeable to you, Mr. Halpin?

[290] Mr. Halpin: Yes.

Redirect Examination

By Mr. Treese:

Q. Mr. Pezant, two lines of inquiry, perhaps, I should have said.

Mr. Pezant, you have indicated that you are familiar with the letters from the Attorney General interposing an objection to the proposed plan from the City of New Orleans. You have read those letters, is that correct? A. Yes.

Q. All right, and I believe you have also indicated that it was in the second letter, the letter dealing with the plan that is before the Court now——? A. Yes sir.

Q. —that they raised for the first time their objection based on vertical districting, north-south districting, is that correct? A. Yes sir, to the best of my knowledge, the first letter had no indication of any objection of vertical lines, nor any suggestion of east-west lines.

Q. Very well. Now, to the best of your knowledge, did any party, any representative group, anyone else propose a plan or an ordinance in conection with the redistricting for the City of New Orleans which described east-west redistricting as opposed to vertical districting? [291] A. The only plan that would have had some semblance of an east-west configuration, Mr. Treese, might have been the Republican plan—I don't know if that was submitted in evidence—and then again, I think that was only in one district, sir, to the best of my knowledge.

Q. Would you be able to tell the Court, Mr. Pezant, or would you be able to give the Court an estimate of the number of man hours expended by you and your staff in preparation of redistricting plans up to the present time? A. Sir, it would—in man hours on my staff including public hearings, and everything, it seems to me it would approach 1,000 man hours.

Mr. Treese: Very well. I have no further questions, Your Honor.

Judge Robinson: We still don't have the papers?

Mr. Stoner: No, Your Honor.

Judge Robinson: I have one or two questions that I would like to put to the witness. Suppose I go ahead and do that.

Judge Waddy: Before you do that—Mr. Treese——

Mr. Treese: Yes, Your Honor.

Judge Waddy: —Is there anyone who could get this information while Judge Robinson is asking these questions?

Judge Robinson: I thought someone had left with [292] that purpose?

Mr. Treese: Yes, our law clerk is out there now with Mr. Eckert, and they are trying to go through the papers right now. Mr. Stoner will assist.

Judge Waddy: Very well.

Judge Robinson: During your testimony, Mr. Pezant, you stated—perhaps on more than one occasion—you made a conscious and a conscientious effort to do anything in the way of resetting these district lines that might dilute the black vote. Also during the course of your testimony, you cited as an example of one such effort, the situation in the upper part of District E where there were the two communities with approximately equal registered voting strength——

Witness: Yes.

Judge Robinson: —moved from one to the other in order, as I understood your testimony, at least in your view, not to result in any diminution of the black vote

insofar as that district is concerned. Am I correct up to this point?

Witness: Yes sir.

Judge Robinson: What other effort or efforts did you make in formulating either or both of the two plans that were approved by the City Council that were from your viewpoint calculated not to dilute the black vote?

Witness: Your Honor, in what is proposed District B,B"B" as in "boy", we were very careful not to draw [293] any lines either east-west or north-south through the center of that proposed district inasmuch as District B contains what our staff considers the greatest potential for a black councilmanic district in the City of New Orleans. It's called the Central City area. It has in addition to a number of houses owned by blacks, it has several public housing projects that contain mostly black population. We at no time on the staff considered any division of that general neighborhood, general area; on the other hand, in the area to the east of the city, there is a very large housing project inhabited mostly by black people——

Judge Robinson: In which direction?

Witness: District E, Your Honor. I mentioned the northern section of District E that we considered changing; I mentioned the southern section that we proposed and in the middle of that District E as it adjoins District E, there is a very large housing project we call the Desire Housing Project, we were very careful not to draw any lines through that area either east-west, or north-south to in any way dissect the potential of black voting strength in that area, sir.

Judge Robinson: Well, if I understand your testimony correctly, and you let me know if I am in error, your efforts in this regard really fell into two categories; (1) if you were actually going to move a line dividing two districts, you were careful that in the movement of the line, [294] the same—a balance would be maintained between black and white votes on whatever was moved from the one district to the other, is that correct?

Witness: That's one consideration, yes.

Judge Robinson: The other is, you were careful not to draw any lines, any dissecting lines, that would run through a substantially black community?

Witness: Yes sir, and I might mention one more factor.

Judge Robinson: Is that fair?

Witness: Yes sir.

Judge Robinson: All right.

Witness: And I might——

Judge Robinson: I'm sorry. Go ahead.

Witness: I might mention one more factor, if we had taken the Desire Housing Project and removed it from District E and placed it in with District D, we would have seriously diluted that black population because a large percentage of the Eighth Ward of the City of New Orleans which is right adjacent to it, the Eighth Ward has a high percentage of white population and registration; that would have had an effect of dilution, Your Honor.

Judge Robinson: Very well, thank you very much.

Do we have the papers?

Mr. Treese: I am informed that the papers were [295] turned over to Mr. Pezant by Mr. Eckert, and he will have to pick them out of the other documents.

Witness: They are in the briefcase.

Judge Robinson: Well, why don't we excuse Mr. Pezant from the stand at this time.

Judge Waddy: Why don't we take our afternoon recess at this time while he's going after it?

Judge Robinson: Let the plaintiffs call the next witness, and at some convenient time we will interrupt and put him back on the stand.

(Addressing witness) Very well, you are excused subject to further call.

Witness: Yes, your Honor.

(Witness withdraw from the stand and exited the courtroom)

Judge Robinson: Mr. Treese, Mr. Stoner, call your next witness.

Mr. Stoner: Yes, we will call as the next witness Councilman Moreau.

Whereupon,

James A. Moreau

took the stand, and being duly sworn, was examined and testified as follows:

[296] Direct Examination

By Mr. Stoner:

Q. Would you please state your name and address for the Court? A. James A. Moreau (spelling out) M-o-r-e-a-u, 6308 Pratt (spelling out) P-r-a-t-t Drive, New Orleans, Louisiana.

Q. Mr. Moreau, what is your occupation? A. I am a businessman and a Councilman-at-Large.

Q. And you are a Councilman-at-Large in the City of New Orleans at the present time? A. Yes sir.

Q. And when were you elected to that position? A. In 1969 I took office, in 1969. I took office in '70.

Q. Now what is your background with respect to the City of New Orleans, are you a native of New Orleans?

A. Yes, I was born and raised in New Orleans and went to school in New Orleans.

Q. Have you lived there all your life? A. Except when I was in the military.

Q. When was that? A. I was in the military in World War II for six years, and again during the Korean War for approximately—on active duty for about ten years.

[297] And do you hold a position in the military? A. Colonel in the Marine Corps Reserves to this date.

Q. And how long have you been on the City Council of New Orleans? A. I have been on there four years as a District Councilman and three years as a Councilman-at-Large; prior to that, I spent two years in the State Legislature.

Q. Directing your attention to the matters before the Court, did there come a time when you introduced what we have referred to in this case as the first plan of redistricting the City of New Orleans? A. Yes, I did introduce that plan, sir.

Q. And approximately when was that introduced, do you recall? A. That was introduced about March of '72, sir.

Q. And did there come a time when another plan was introduced by you to the City Council for the redistricting? A. Yes, sir, it was introduced I think in December of '72.

Q. And that is the plan that has been referred to as the second plan? A. Yes, sir, that is the second plan, sir.

Q. And then the plan that is before the Court? A. Yes sir.

[298] Q. Now could you tell the Court the circumstances surrounding the introduction of the second plan? A. Well sir, if I may go back, I wrote to the Census Bureau by registered mail requesting that the Census data be made available to us as early as possible, based on the history of what happened in 1961, this matter was contested in court, and I anticipated this happening again. The figures were delayed in getting to us.

When they did arrive, I asked the Council research staff to prepare a plan, which was the first plan which was prepared. That plan was introduced and at the time that I concurred in that plan, they had two District Councilmen in Algiers and of course Algiers was also represented by the two Councilman-at-Large. This would give Algiers, in my opinion, four Councilmen who would represent them in the main problems with the bridge situation.

This plan was greatly amended when it came up before the City Council after public hearings. I voted for the plan in order to get the plan on the record because we had a deadline of April '72 to redistrict ourselves in accordance with the City Charter.

At that time I made a statement that was printed in the newspapers that I did not think that this plan would hold up in court; I didn't think it would meet the requirements, and I wrote to Mr. Chapital, the head of the local NAACP, [299] requesting his assistance in drafting a plan which we would consider, which eventually became to be known as the second plan. Mr. Chapital replied to me that he appreciated being brought into the matter, but he thought that the plan which had been submitted was sufficient, and he didn't care to discuss the matter further. I thanked him for his thoughts——

Q. Now the plan that you referred to as having been submitted to the NAACP is Plaintiffs' Exhibit Number 15, is that correct? A. Yes sir, that appears to be the plan, yes sir.

Q. How did you make any other request of anyone concerning the possibility of plans of redistricting? A. Yes sir. I spoke to Mr. Jon Eckert who, I think, was designated as the principal man on the Council research staff to draw these plans, to come up with several plans, including the NAACP plan, and I specifically cautioned him that I did not want the voter statistics; I only wanted population statistics, because according to the City Charter, we are required to redistrict by population and not by voter strength.

Q. Did there come a time when the Council research staff did submit to you plans for the redistricting? A. Yes sir, they submitted four plans to me for redistricting, and I selected the one which we now have, and after the plan was introduced, then I asked for the voter strength. [300] And incidentally, I would like to state this for the record, at the time that I requested Mr. Eckert to draw up the plans, I told him to draw up the plans regardless to where the district councilman lived, and I believe that that was the instructions that he understood.

Then after the plan was submitted to me and I noticed that he did not have any of the councilmen conflicting, I

said to him that I was glad, I'm glad that the plan we selected did not have any councilman conflict because it is a well-known fact that the vote very often under state council law would be six-to-one, more would be in the minority and six would be in the majority. And I did not want any of the councilmen to think—personally we are friends, politically we are not—I didn't want any of them to think I was trying to get one councilman or another councilman by putting two of them in the same district.

Q. Now returning to 1971 at the time you first started this redistricting, did you hold any position in the City Council? A. Oh yes, I was Council President.

Q. And you felt it your obligation as Council President to initiate and keep moving a redistricting paln, is that correct? A. Yes sir.

Q. And on that basis you made the request for the [301] submission of the—— A. In '71, I made the request to the Bureau of Census with a registered letter, with copies to our local congressional delegation, requesting the Bureau of Census to expedite the material to us, and then, of course, the information was not received until '72, and at that time I asked that the plan be prepared.

Q. How do you believe that the second plan, the plan that is before the Court, is a fair plan for the redistricting for the City of New Orleans? A. Your Honors, I will stand up for that plan morally, equitably, and before God as being honest in my sincere beilef, that it is a good plan; it's not intended to dilute either the white or the black voter population of this city. I said it publicly and I have said it time and time again, that I believe that I really believe that the only time this country can achieve the greatness that it can achieve is when we no longer have a black voter or a white voter, but American voters, which we all are. And sir, I have served in two wars with the hope that we could maintain and achieve that goal.

To answer your question, yes, I deeply believe in that plan.

Mr. Stoner: I have no further questions of this witness. [302] Judge Robinson: Any cross-examination of this witness?

Cross-Examination

By Mr. Shurtliff:

Q. Councilman Moreau, you introduced the first proposed ordinance dealing with redistricting, is that correct, sir? A. Yes, sir, I did.

Q. And did you introduce the amendments to that? A. No, sir, I did not, but I was an author of the amendments after they were introduced.

Q. Pardon? I didn't get your answer. A. I did not introduce the amendments, but I voted for them. I voted for them after they were introduced.

Q. And did you vote for—you voted for the amendments and then you voted for the bill or final passage? A. Yes, I voted for them as amended on final passage.

Q. You were also the sponsor of the plan that became the second? A. Yes, sir.

Q. All right . . . A. In fact, I rather claim to be the sponsor of the first by choice, the second by necessity because of the time limitation we had to get an ordinance before the City Council and a vote—I mean the Attorney General.

[303] Q. You believe the second plan to be a better plan than the first plan? A. Positively.

Q. Why do you hold that judgment, sir? A. Well, you see, the first plan came up and replaced three district councilmen in Algiers which the people of Algiers opposed. The next thing is District A still included the major portion of Algiers. Therefore, I believe that when we were just reliving a problem which has been stated many, many times in the city that District A on the western part of New Orleans is not compatible with District A, known as Algiers.

Q. How about from a racial point of view, do you consider one of the plans to be better or worse than the other,

what is your judgment along those lines? A. Sir, I have to state honestly that I have not considered race an issue in any of these plans. I only asked for the voter statistics after the plan was introduced. All I was interested in was population statistics in order that we would carry out the provisions of the charter which required that we redistrict ourselves about five districts equal by population.

Q. Were those population statistics provided to you at that time? A. Yes, sir, the population statistics were provided [304] to me at the time and not the voter statistics.

Q. Were the population statistics provided to you by race, sir? A. Yes, sir. Amended to the plan that came to me was the population by each district, and without my request they had attached to it the black percentage of the population by district, not by voters.

Q. You are talking about the second plan? A. Yes, sir, the second plan—the second plan, I'm sorry. The first plan . . .

Q. At that time you received the four plans from Mr. Eckert? A. The first time, I don't know what I received because frankly I was not interested in that plan too much. The second one was the one I was interested in, and when I asked—to reclarify this, I almost lost myself—when I askd for the population statistics, they did put on there the black population, but by population only, not by voters.

Q. You testified that you asked Mr. Chapital to assist you in drafting a plan? A. Yes, sir.

Q. When was that, sir? A. I think it was shortly after—I have the letter with me, if you would care to refresh my memory on it, I could get it—it was shortly after the first plan was [305] adopted. I was well aware of the fact that this plan would be contested in court because it was stated by various people that they would contest it, no matter when it came up, they would contest it in court, and I wrote Mr. Chapital inviting—I would say sometime, maybe March, or something of that sort—I could get the file if you wanted to get the exact date if that is critical—

and Mr. Chapital replied back, who was then president of the NAACP in New Orleans, that they felt that the new plan was compatible with the NAACP Plan because—incidentally, I asked him to meet with me and members of the council research staff, and a representative of the NAACP and he replied back that he didn't think that any further discussion of the matter would serve any purpose because he felt that the NAACP Plan was the plan.

I replied to him that I appreciated his viewpoint and to go ahead and start drafting what is now known as the second plan.

Q. But at the time you wrote him a letter, you already had a plan proposed by his organization? A. Oh, yes, sir, for both—I beg your pardon, I was anticipating your question, sir.

Your question was when I wrote to him we had a plan already prepared by his office, his organization? Yes, sir, we did, sir.

Q. What was the purpose of your letter? [306] A. The purpose of his letter——

Q. No, your letter. A. The purpose of our letter is that I did not agree with certain parts of his plan and to get together with Mr. Chapital and the council research staff and let them come up to see where we could compromise.

Frankly, I believe that the method in designing a plan to cover the City of New Orleans is to start on the eastern boundary, that's "E", and get a hundred and eighteen thousand voters; start on the western boundary and get a hundred and eighteen thousand voters; then take the one in the middle which happens to be "C" and get your hundrd and eighteen thousand voters out of that, and then get "B" and "D" to bring in a hundred and eighteen thousand voters, and that is my idea how to design the plan, but I gave no one those instructions.

Q. Why did you not given anyone those instructions? A. Because I wanted the council research staff to be free to move in the directions that they thought they should move according to the guidelines cited by the Attorney General's Office and by the city charter.

Q. Did you give them any guidelines? A. Yes, sir, I told them I wanted a plan drawn up that would meet the provisions of the Attorney General's instructions, the Civil Rights Act, the City Charter which [307] required division by populations, that I wanted no regard made to any racial voter strength, and I didn't care whether it brought one or two or more councilment against one another.

Q. And this was in reference to the second? A. The second plan, yes, sir.

Q. And you received from Mr. Eckert four plans? A. I did, sir.

Q. You testified at one point, after you received the plans that you told Mr. Eckert that you were glad or happy that it didn't place any two incumbents councilmen in the same districts, did I understand you correctly? A. Yes, sir, I did, because here's the point. Many times I have had, I'd say political arguments, before the City Council with other members of the Council and disagreed with them and I felt that if I came up with a plan that pitted two of them against one another, or three of them against one another, they would say I was deliberately trying to eliminate one of them from the re-election, and that is the only reason why.

But frankly, I could care less about whether it brought two against them or not.

Q. When did you make this statement to Mr. Eckert? A. After I selected this plan.

Q. And you selected that plan among four plans he had given to you? [308] A. Yes, sir.

Q. And did any of the other three plans place any—place two or more incumbents in the same district? A. I believe the NAACP plan placed two incumbents in one district, and I believe one of the other plans placed—Mr. Stoner?

Q. Mr. Shurtliff. A. . . . Mr. Shurtliff, believe me, like Mr. Beer, I could care less.

Q. But you had four plans, did you not, that had been provided to you by Mr. Eckert? A. Yes, sir.

Q. For proposals? A. Four proposals.

Q. And you selected the proposal which you wished to have introduced as an ordinance, did you not? A. Yes, sir.

Q. Did Mr. Eckert select one of the four? A. No, sir, I selected it.

Q. So you are the one who selected the plan that didn't place two or more councilmen in the same district? A. Yes, sir.

Q. Was there a reason you selected that plan over the other three? A. Yes, and I will be glad to explain it to you if [309] you care to, sir.

Q. If you would, please? A. All right, sir.

Judge Robinson: Did you need something?

Witness: I think—if not, I have it here. I have a copy of it.

By Mr. Shurtliff:

Q. All right, sir . . .

Judge Waddy: You want to go down to the board?

Witness: Yes, sir, if I may.

Judge Robinson: You may do so.

(Witness withdrew from the stand and approached the board.)

Witness: First of all, it is my opinion the people who reside in this area (indicating), the people who reside in this area (indicating), the people who reside in this area, more or less are the same type of strata of life, as you say—and incidentally, you do have blacks in this area. I live out on the Lakefront and I have a black doctor who is a neighbor of mine.

All right, the next thing is, your problem of your riverfront. This is your riverfront here (indicating) your main part of the riverfront, your main part of the riverfront is here (indicating). This is your central business district (indicating). This is your business district of Old Algiers. Therefore, by keeping C and C together, you kept [310] this thing here, this part here (indicating) from passing.

The next thing is on the NAACP Plan . . .

Judge Robinson: I think you will have to . . .

Judge Waddy: That's the one just above that.

Witness: Well, that's all right, I can explain it. The NAACP Plan came across and cut out the River entirely from District E. Now the river is—well, it's our largest source of income; therefore if you took from the riverfront out of District E, when this gentleman or lady who represented District E in the future, would be inclined to disregard the needs of the riverfront. Therefore, this is one reason why I didn't like this particular phase of the NAACP Plan because not only it didn't keep up with the so-called geographical lines, but it did come over and eliminate the riverfront from District E. And that is the reason why I chose this one over the other.

Mr. Shurtliff: Thank you.

By Mr. Shurtliff:

Q. So I understand it, under the plan that you chose each districts fronts on the river, is that correct? A. Yes, sir, at least it has a bearing. I think it's been explained that this is know as the front of New Orleans.

It is interesting to note, by the way,—may I point out the Court—that Ward One and Two is here (indicating) [311] Three and Four, Five, Six and Seven are on this direction (indicating) and then you come back to Nine and pick up Ten, Eleven, Twelve, this way (indicating).

In other words, when our city was drawn, it was 1-2, (indicating) and then you bounce back to 3, 4, because one and two are on the western side of Canal Street and Three and Four are on the eastern side of Canal Street (indicating) and that's when you pick up Five, Six, Seven, Eight, Nine on this—no, I beg your pardon—One, Two, Three, Four, Five are on this side (indicating); then Six, Seven, Eight, Nine, Ten are on this side and that's as our city was expanding into wards.

Did I answer your question?

Q. You did, sir.

Mr. Shurliff: Unless you have further need to appear at the map, I don't think . . .

Witness: No, sir, I don't.

Mr. Shurtliff. I think you can return.

(Witness resumed the stand.)

By Mr. Shurtliff:

Q. After you proposed a plan, introduced it, you said you did obtain voter registration statistics at that time? A. Yes, sir.

Q. For what purpose? [312] A. Because we are required by law to hold public hearings, and I know that this matter would be brought up at the public hearings, and I wanted to have this information available.

Q. Was that matter brought up? A. Oh, yes, sir.

Q. Who brought it up? A. Oh, any number of people.

Q. All right . . . A. But one thing I would like to point out, if I may, to the Court,—and if I may apologize to the Court, I am not an attorney, and in my enthusiasm befor I apologize to the Court.

Judge Robinson: I did not consider it intentionally done and I knew it was inadvertently done, and it wasn't necessary for you to identify yourself.

Witness: Excuse me, sir.

Judge Robinson: I just want you to know that I observed it . . .

Witness: Yes, sir.

Judge Robinson: . . . and it was—although inadvertent, was improper, and I thought it was only necessary to call attention to it and I'm glad to know I am right.

Witness: And may the Court accept my apologies.

Judge Robinson: It isn't necessary to do that.

[313] Witness: I thank you.

Judge Robinson: I thought you were a little carried away, too.

Witness: Yes, sir.

(Continuing) I would like to point this out, sir, one problem we have in New Orleans—and of course I am

dealing with the 1970 census because this is what guided our redistricting plans—we have 45% black population and 55% white population.

However, as of the date of the consideration of these redistricting plans, we had 34% black voting population and 64% white voting population. This presents a mathematical—a geographical problem of getting 45% population into a 33-voter population.

I think I heard Mr. Pezant say that the statistics will show, which I verified, that a great number of our black population are younger people and this is why we have to have a variance, unfortunately, in our redistricting plan of population versus voter strength.

By Mr. Shurtliff:

Q. Councilman Moreau, you testified that you really didn't believe the first plan passed by the City Council had a great chance of being approved by the Attorney General, is that correct? A. That's right, sir, but may I explain it please?

[314] Q. Yes. A. We are required by the City Charter of New Orleans to redistrict six months after the final statistics have been furnished to the city by the Bureau of Census. That was the reason why I got a registered letter off when I was president of th Council to Mr. Tannan (phonetic spelling) who I think was representing the Bureau at the time.

I kept away from any discussion of the redistricting program because frankly it involved primarily the five district councilmen. Then when the decision was given that, I think September was the time, of '72, was the date that we received the so-called third count take and then we had six months from that date to redistrict ourselves. And I felt that if these five district council—if these people could not get together, these five district councilmen could not get together and get a plan going, I would pick out a plan and introduce it to get it into court, or to get it into the record, then let's get on with the business of redistricting a real plan than the one we have.

Q. Then it is your testimony that the first plan approved by the City Council was not a serious attempt to redistrict? A. Oh, no, sir, it was a very serious attempt to redistrict the city, but remember, it was amended to divide Algiers into three districts. Algiers only had two districts [315] than. And the theory why I went along with the two districts, the plan for Algiers was, Algiers continually complained about the fact that they didn't have adequate representation on the City Council and we considered if we could get two District Councilmen over there representing Algiers, along with the two councilmen at-large, Algiers would have four persons for their councilmen and would get due consideration for their problems.

When it came up before the City Council, it was amended to put three districts in Algiers. At that time I knew there was no chance for this plan to go through because the people of Algiers objected to it also.

Q. Do you believe that it's important that the people of Algiers have persons on the City Council speaking to their issues? A. Well, positively.

Q. Why is that? A. You mean, have them on the Council speaking on the issue?

Q. Yes. A. Well, they are part of the City of New Orleans and they should be represented.

Q. And it was your judgment that if you divided Algiers into two districts, you'd have more persons who are speaking for the positions advocated by residents of Algiers? [316] A. At that time, yes.

Q. Do you believe it is important for the black residents of New Orleans to have persons on the City Council representing their interests? A. Well——

Q. Speaking to the positions that they advocate? A. I am glad you asked that question, Mr. Santcliff.

Q. Shurtliff.

Q. I feel this way that any black man can serve in any public office, elected by the people, can represent me and I feel that I can represent any man regardless of race, creed or color. Thank God I have reached the stage in life that I

no longer look upon a man as black and white; I look upon all people as human beings.

Therefore, I feel that I can represent anyone regardless of race, creed or color and anyone can represent m as long as he is an elected official.

Q. Can you represent the people in Algiers? A. Positively.

Q. Without living there? A. Positively because I have spent a lot of time over there.

Q. Can other councilmen? A. I can't answer for the other councilmen, sir.

And may I add, too, sir, I was raised in the vicinity [317] of St. Bernard's Housing Project there and I am still a resident of that area, which is an entirely black area.

Q. How many times have you run for the City Council? A. Twice.

Q. Have you run for other public office? A. Yes, sir, I ran for the State Legislature from Ward Seven which at that time had forty percent black residents and I was elected then.

And then the second time I ran for the City Council was Wards Seven and Eight and I was elected in the first primary.

And, incidentally, the third time I ran, there were nine of us in the race; we had two at-large and I won that in the first primary with a twenty-five percent, plus one vote.

Q. Do you believe the voting in New Orleans is along racial lines?

Judge Robinson: I didn't get the question.

Mr. Shurliff: (repeating) Do you believe that voting in New Orleans is along racial lines?

Witness: To an extent, yes I do, unfortunately. And I will say this, sir, unfortunately, mainly in a black area from the statistics, but we have many whites who will vote for blacks; I was one of the first ones to endorse Judge Augustine, who is black, and we have many blacks who [318] have elected whites where you have a large number of black voters.

I don't think that we can say that New Orleans is a complete block-voting city, as perhaps in other cities, sir.

Incidentally, Dr. Spears was elected to the school board citywide; he is also black.

Court Reporter: Would you spell that name, please?

Witness: (spelling out) That's S-p-e-a-rs.

Judge Robinson: I take it, Mr. Shurtliff, you will not be inconvenienced if we take a break at this point?

Mr. Shurtliff: I will not, Your Honor.

Judge Robinson: Very well, at this time, Marshal, the Court will stand in recess for ten minutes.

(Whereupon the Court recessed at 3:12 p.m.)

* * * * * * * * * *

MID-AFTERNOON SESSION

(The Three-Judge Court reconvened at 3.28 p.m.)

Judge Robinson: You may resume, Mr. Shurtliff.

(Witness resumed the stand.)

By Mr. Shurtliff:

Q. Councilman Moreau, the first plan submitted, you have testified you did not consider it had a good chance of approval by the Attorney General? [319] A. After the amendments, sir.

Q. What was the reason you felt the Attorney General would disapprove that legislation? A. Because of the fact of the geographic lines were not followed—and you can look at the map up there and see it—one of the understandings is that the lines must be as continguous as possible and that one of the reasons why I thought that plan would not be approved.

Q. Is it your understanding that the Attorney General's approval or disapproval goes to the question of race? A. Again, I would like to point out, Mr. Shurtliff, that race—I couldn't give you the statistics on race on that plan.

May I put in another thing, too. Again I would like to point out that in my statement, I don't recall if I said this, but there were two provisos; one was the Attorney General and the next—and this is in writing—being able to withstand any court attack; as I mentioned I think, to you, sir,

Mr. Schracow, a resident of Algiers, had the 1961 redistricting plan adopted by the City Council thrown out because of the disparity in Algiers. Therefore, it was my opinion that a citizen attacked this case, this is a redistricting plan also, and have it thrown out.

Q. On what basis did you consider a citizen could attack this first plan? [320] A. On the same basis that it was attacked in 1961, that the possibility of Algiers getting a councilman of their own in the near future would be diluted.

What I mean is that you have sitxy thousand-odd voters in Algiers and Algiers is an expanding area. If Algiers could expand to the point where they would have gotten from a hundred thousand to a hundred eighteen thousand people in one of the elections, then they could elect their own councilman by having their own district; whereas in this way, they were divided into three districts, sir.

Q. You stated that you also directed that the plan not dilute the black or white vote, is that correct? A. That there would be no voter dilution.

Q. Would you define for us what you meant by that term "dilution"? A. In other words, that there would be no lines drawn that would in any way gerrymander white or black voter strength, or a dilution of a black or white voter strength.

Q. What do you mean by "gerrymander"? A. Well, sir, as was pointed out by Mr. Pezant, if you can take the Desire Housing Project out of New Orleans East where you have over ten thousand black voters concentrated into one area; you can take the same North Project where you have a considerable number of black voter-residents, I don't know how many are votes; therefore you could by placing [321] these into one area or another, either dilute the black strength—voter strength, or dilute the white voter strength.

Q. Depending on where you took it from and where you put it? A. Yes.

Q. Wouldn't that problem necessarily follow from having to restructure district lines? A. No, sir, not necessarily

because as you look at the—let's look at the plan we now have in effect.

When in Plan B you have a concentration of black voters, which is known as Central City, then where you have approximately the Letter D, you have a concentration of black voters, what is known as St. Bernard's Project, and I think on—if you just look over here (indicating), I believe, on that map, Mr. Shurtliff, go to the big map there where you have the orange section, that may be the Desire Project.

Judge Robinson: Did you wish that map clear?

Witness: Sir?

Judge Robinson: Did you wish that map cleared?

Witness: No, I don't believe it has to be cleared. You see, what I am getting at is you have three major concentrations of black voter population in New Orleans. I would say the voter population is divided—excuse me, when I use the words "voter population", please forgive me, I mean your black population, is practically ninety-eight percent of [322] Desire, practically ninety-five percent in St. Bernard's, in District B, I imagine it would be around seventy percent in population.

Mr. Shurtliff: Would you go to the map, sir?

Witness: Yes.

(Witness withdrew from the stand and approached the board.)

By Mr. Shurtliff:

Q. Now you say there are generally speaking three large black area? A. I am talking about large black areas, yes, sir. Here (indicating) this is Central City, this is The St. Bernard Housing Project, and somewhere over here (indicating) you have the Desire Project on Louisa Street.

Of course you do have such in other areas, which I think the term is used "salt and papper" areas, where you have concentrations.

For example, in the area in which I was born—I live out in this area right now (indicating)—the area where I was born is practically a hundred percent black. My mother, my

uncle, and two cousins still live in that area and I own a home in that area.

Q. Maybe you can indicate on this map better (displaying another map)? A. (Examining the map) Yes, this is better, this [323] shows it. This is Central City right here (indicating), this would be St. Bernard right here (indicating), and I imagine this would be the Desire Area right here (indicating), and this is where you have your heavy concentration.

Q. Where are the salt and pepper areas? A. Well, the salt and pepper areas for example would be around this area here (indicating), the area here (indicating), and this area here (indicating) where you don't have the majority of black voter—black population.

Over in Algiers——

Judge Robinson: They are voter registrations on that map, are they not?

Mr. Shurtliff: Are they voter registrations?

Witness: Yes, sir (repeating), yes, sir, they are right down here (indicating).

Judge Robinson: Is this voter registration here (indicating by pointing), then population is on the other side.

Witness: This is voter here (indicating)?

Judge Robinson: That is voter.

Witness: And this is population (indicating)?

Judge Robinson: That is population.

Witness: Well, that would be a better example on the population. I am more familiar with population than I am with the voter registration.

[324] Yes, sir, you have a question?

Mr. Shurtliff: Yes.

By Mr. Shurtliff:

Q. These three general areas are the areas you state have the heavy concentration of black population? A. That's right.

Q. Now given those concentrations what could dilute those concentrations? A. You cut this in half (indicating),

you cut this in half (indicating), and you cut this in half (indicating).

Q. Who would it dilute, the persons taken or the persons remaining? A. I don't know. It could dilute both; it could dilute the white or dilute the black. I would like to point out again to you, sir, in my consideration of this plan, I did not go into voter population extensively at all. I only did it to have information, for that purpose, because I stuck to the redistricting lines on a population basis.

It is my understanding that nowhere are we instructed to redistrict by race, creed or color, according to the City Charter.

Q. What are your instructions with reference to that? A. By population and geographical lines that are contiguous. I'm speaking of the City Charter.

Q. Does this line (indicating) separating Districts B [325] and C, does that go through what you consider a heavy black concentration? A. I wouldn't know; by looking at it on the map, I imagine it would be.

Q. That's Canal Street? A. No, sir, Canal Street is not a heavy populated area. Where you would have a population around here (indicating), this area here, from my personal observation, you would have quite a number of blacks.

Q. What race on this side (indicating)? A. On this side (indicating) would be mostly business areas, on the eastern side of Canal Street.

Q. Yes. A. Yes, sir, it would be mostly business areas; on the western side, it would be most business areas until you get past Howard Avenue.

Q. Can you find Canal on here? A. This is Canal here (indicating).

Q. This is Canal Street (indicating)?

Judge Waddy: Which is Canal Street?

Witness: Yes, this is Canal Street (indicating). This is the business district right here (indicating), then you have a housing project right here (indicating). In fact, you have two housing projects; you have the Laffite housing project [326] right here, I don't know what you call this one right

off Canal Street (indicating), but you have two housing projects right there.

Mr. Shurtliff: I don't have any further questions on the maps.

Witness: All right.

Judge Waddy: While you are there, though, has any portion of the area northeast of Canal Street been placed in District D?

Witness: Northeast of Canal Street in District D? No, sir, I don't believe so.

See, Canal Street runs this way (indicating), then Canal —oh, pardon me, sir. Canal Street runs this way (indicating), and Canal Boulevard out this way (indicating).

Judge Waddy: No, I'm talking about, I believe, that portion to your right (indicating by pointing). Has any portion of it been put in C, I didn't mean D.

Witness: Oh, yes, sir, put in C here (indicating), but, sir, this is predominantly in my opinion a white population out here (indicating).

Judge Waddy: Come down further, come on down to your next C.

Witness: All right (moving along the map to a certain position and indicating), in here?

Judge Waddy: That's right. Now I understand that [327] is Canal Street just below that.

Witness: Yes, sir.

Judge Waddy: Now, my question is whether any portion of the area that is north and east, immediately north and east, that have been placed over in Section D?

Witness: No, sir, this is still Esplanade Avenue I believe, and that's been retained in E.

Now you should have a black population in this area right here (indicating).

(Addressing counsel) Can you check that map? It is on Esplanade and Legion Field, like it comes to a point there. It's——

Judge Robinson: Come up three lines, Mr. Shurtliff, and I guess you will have it.

Witness: Well, anyway, let's put it this way, I do know you have a concentration of—well, there are older homes in here (indicating) and you have a mixture of people who are, in fact, who may be very affluent people buying the older homes and reclaiming them and living right next door to what we call "shotgun doubles", in that area, which are low-rental homes, and a lot of these people own their homes in that area.

Judge Waddy: What I am trying to get, there appears to be a concentration of blacks to the northeast of Canal Street thre, just above your hand, Mr. Shurtliff, in there.

[328] (Mr. Shurtliff indicating on the map.)

Judge Waddy: Now my question is whether or not the redistricting has any way gone through the center of that concentration?

Witness: No, sir, that's been left alone.

Mr. Shurtliff: Does this line (indicating on the map) go through here (indicating)?

Witness: I don't know where you are. This is Esplanade (indicating). The old District D, sir—I hope you can catch me over there on the map—old District D used to go all the way out Esplanade and City Park, sir, now they have brought it over this way (indicating), and this would be northeast of this area right here (indicating). This is the French border right here (indicating) and northeast of it would be right here (indicating on the map).

I'm sorry, Your Honor, I don't follow your question too carefully.

Judge Robinson: I think maybe some help may be on the way. It looks like an overlay.

May I make suggestion, do you have an overlay, either for the map that is an overlay that would mark off these five electoral districts, either for the large map showing the population distribution by racial concentration, or for the smaller map showing the voter registration distribution on a racial basis? Do you have an overlay for either one of those [329] two because after all, the voter registration fairly well follows.

Mr. Shurtliff: Your Honor, what we have is (displaying a map to the Court) . . .

Judge Robinson: Bring it up a little closer because I am not able to see the different colors.

(Mr. Shurtliff moved forward and displayed the map to the Court.)

Judge Robinson: (Addressing Deputy Marshal) Could you help them rig something up right here?

Deputy U. S. Marshall: Yes, sir (approaching the board, assisting counsel with the map).

Mr. Shurtliff: Now, if I may, Your Honor, the bottom map is Defendants' Exhibit 1, which is a map illustrating fifty black dots, registered voters by race. The tissue, (indicating) illustrates the ward lines and residences of incumbent city councilmen, that is intervenors' exhibit number 1.

Judge Waddy: Are these present ward lines?

Mr. Shurtliff: Yes, sir, they are.

This overlay (indicating) is of the second plan, the one under consideration.

Judge Robinson: We understand that.

Now, Mr. Shurtliff, I don't know about my colleagues, but I am getting a little glare that is affecting the visibility owing to the gloss and the overhead light. Is there some [330] way we get that pressed down flat (indicating)?

(Counsel adjusting the maps and the overlay accordingly.)

Deputy Clerk. (Addressing Mr. Shurtliff) The overlay is Defendants' Number 5?

Mr. Shurtliff: Yes.

Judge Robinson: That's very much better.

First, I would simply like to inquire of Mr. Shurtliff, I take it that what is on the underlying map containing the green and red dots would conform to the Plaintiffs' I don't recall what the number is—that undertakes Plaintiffs' Exhibit Number 2, is it, Mr. Stoner—that undertakes to show the distribution on a racial basis of registered voters in New Orleans, is that correct?

Mr. Shurtliff: That is not correct, Your Honor, in that Plaintiffs' Exhibit Number 2 reflects more recent registration data. This is as of 11-17-71. There would not be in our judgment much difference.

Judge Robinson: All right. Is there any objection for purposes of the testimony of Mr. Moreau to use this exhibit?

Mr. Stoner: No, Your Honor.

Mr. Treese: No, Your Honor.

Judge Robinson: The second thing of course is—and I say this specifically for the understanding of the witness—this is a distribution of registered voters and [331] not a distribution of population?

Witness: Yes, Your Honor.

Judge Robinson: Does that make any difference to anyone for purposes of the questions to be put to this witness?

Mr. Shurtliff: Makes no difference to us, our Honor.

Judge Robinson: Very well.

Gentlemen, since we do have a problem in following the testimony of the witness and the use of this map, the Court will permit counsel or the parties to gather around and if everybody is in a position that everything that is about to transpire can be seen, you may resume your questioning.

Judge Waddy: Well, I think my question has been answered by the very placing of the map and the overlay on the board.

By Mr. Shurtliff:

Q. In your judgment, Councilman Moreau, would the drawing of this line (indicating) be a dilution or effect a dilution? A. I wouldn't know, Mr. Shurtliff, because as I have told you before, sir, when these plans were submitted to me, all I asked for was voter population: I did not go into the voter registration; and to dilute one or the other, if it was a dilution of one or the other, it was done on—if it was done on an intentional purpose, I would have objected to it [332] either way, diluting the white vote or diluting the black vote.

Bear in mind, sir, from this end of it, I am a candidate at-large. Politically, I could have been astute and stayed

away from this proposition because I run at-large, but I think it was my responsibility as the president of the City Council and an elected official of the City of New Orleans to get about the business of what we had to do with redistricting.

Q. Would you know, Councilman Moreau, what the impact on District C would have been; for example, had this line been drawn straight up here (indicating) and go this way and gone this way? A. No, sir, I don't know.

Q. Do you know what the impact would have been on District B had it been drawn here (indicating) or here? A. Except to see——

Mr. Stoner: I object to the question here because Councilmanic Districts as drawn are as nearly as possible equal in population. Now I think it can be drawn as showing clearly, remembering that each dot refers to, I believe, a hundred and fifty voters; that clearly, those lines that Mr. Shurtliff has suggested would clearly change the population balance between the districts.

Judge Robinson: Well, the question which was put to Mr. Moreau was did he know what the effect would be. I see no objection to that question.

[333] Witness: I will answer the question by saying it this way. First of all, as to the population, I have no way of knowing unless I have the number of people who were living there.

Now it is obvious if you drew a line here (indicating), that in creased the number of red dots, it increased the strength of your black voter population.

If you drew a line that encompassed more green dots, you would increase the white voting strength, and of course, it would have the opposite effect of diluting the other.

By Mr. Shurtliff:

Q. But in this plan—— A. Yes, sir.

Q. —does the drawing of this line (indicating) in your judgment effect a dilution? A. No, sir.

Q. Well—— A. You mean the way it is drawn right now?

Q. Yes. A. No, sir. All it did was divide the city by population, and that is what I'm interested in, that's my primary concern and interest and responsibility.

Q. Is to divide the city by population? A. Yes, sir. When we are speaking about population versus voters. In other words, if I have to make a decision [334] to divide the city by population or by voters, I would carry out the mandates of the City Charter which says we will redistrict the city by five equal districts by population.

Q. Well, in your judgment, is this line drawn in this way effect a dilution? A. I couldn't answer that, Mr. Shurtliff, sir, without checking the figures on this. If you eliminated this (indicating), it looks like it would be equal, but you would turn around and put more population into District E which would throw you imbalance in District D from your population viewpoint.

Therefore, you would be subject to a suit by someone who would come in like they did the last time in 1961.

Mr. Shurtliff: As long as we have this up, we would like to put up the NAACP Plan for comparison at this time.

Defendants' Exhibit 6.

(Counsel are placing NAACP map in position for display.)

By Mr. Shurtliff:

Q. This is the NAACP Plan (indicating). Was this plan proposed to you by Mr. Eckert from one of the four submitted to you by Mr. Eckert? A. Let's put it this way, the plan was first submitted to me by—not to me, to the City Council by Mr. Chapital, and then I asked Mr. Eckert to superimpose that plan on a map with [335] population statistics, not voter registration statistics, population.

Q. And this was one of the four plans submitted to for for your consideration? A. Right, sir.

Q. And you stated that you did not care for this plan because of what reason? Would you illustrate the reason? A. I don't believe I stated that I didn't care for this plan,

sir. I said I had objections to this plan based on this fact here.

First of all, this line (indicating) came over and took—eliminated—incidentally, this is St. Bernard Parish—this eliminated District E entirely, any riverfront representation at all.

Th next thing is, it placed Algiers in District D, and I believe, in my opinion, that Algiers is more compatible for many with District C.

Q. Do you know the differences—did you determine the differences between the NAACP Plan and the plan you ultimately selected in terms of racial composition of each of the five districts? A. Absolutely not.

Q. You did not have those figures? A. I probably have them in my briefcase, but by memory I could not give them to you.

[336] A and B, of course, you know, were the thing.

Q. C, D and E were not? A. C, D and E were different.

Q. All right.— A. It is my understanding that in the NAACP plan, the population statistics were within close enough range to be considered as a good plan by population, you know, on a redistricting—city on the basis of the (pausing in thought)——

Q. One-man, one-vote? A. Yes, sir, one-man, one-vote.

And of course, you have the other problem—I think I have mentioned this—again, you are deviating, you are coming out here (indicating) and going way over here (indicating) on a geographical line. That's a minor point, but——

Q. I don't understand. A. Well, sir, the instructions were, we were trying to keep as nearly as possible our lines in line. Here you have a line (indicating) that comes over here and all of a sudden shoots way over into this area right here (indicating).

Q. Why were you trying to avoid that result? A. Because were trying to keep—this is Franklin Avenue I belive, right there (indicating), and after Franklin Avenue—and Franklin Avenue is one of the main thoroughfares of the City of New Orleans, which is a natural boundary again, [337] and neighborhoods, and so forth, and so on, and has been that way for many years.

Q. Is Florida avenue a major boundary line? A. No, sir. Florida Avenue is not a major boundary line.

Q. St. Claude? A. St. Claude is not a major boundary line, no, sir.

Q. How about on this plan (indicating), doesn't this line go off in another direction? A. Yes, sir, but it does not come over to this direction way over here (indicating), sir.

This line comes over here to pick up this amount to get a balance in your population count. And I say——

Q. Is that a good reason for having a line go this way (indicating)? A. Yes, sir, unless you can show some other way that you could get this over here (indicating). They possibly considered going this way (indicating), which is the old boundary of District D; District D went this way (indicating); but the probably considered that they couldn't get the population count because it looks like they have a heavier population here, because over here (indicating) you have the fairgrounds, which is a lot of empty ground.

Q. Did you consider it important to follow ward lines? A. I considered the ward lines as a guideline, but [338] I did not consider that the following of a ward line was a must because historically we have had the ward lines and the city has been divided that way, in that manner and considering everything else being equal, yes, I would consider ward lines in preference to anything else other than natural boundaries.

If you have to deviate, but deviate to natural boundaries, but keep the ward lines as nearly as possible. We have no more political relationship with ward boundaries when we used to elect a representative from a ward to such and such.

Q. State representative? A. Yes, state representative.

Q. You no longer do that? A. To my knowledge, no. I think you go through different wards.

A ward boundary would not be a final determining factor in this.

Q. Were ward lines important in the drawing of this plans? A. You say were?

Q. Were ward lines an important factor—I will stay with that—an important factor . . . A. Yes, I will say this, because ward lines historically followed your historical lines and your natural lines. Therefore, if you had a ward line, for example, that runs parallel with Bayou St. John, if you had another one that ran along [339] Franklin Avenue, this was a natural boundary and the ward was created that way for historical reasons for years back.

Therefore, it's not necessary this way because of the ward lines because it deviated from the ward line here (indicating), by the way, this is the seventh ward, and they brought this ward over here (indicating), so they didn't redistrict themselves solely to ward lines; they deviated from ward lines.

Q. Well, were ward lines only important then so far as they also conformed to natural boundary lines? A. Sir, again I would like to point out to you that when this plan was handed to me, the only guidelines that I gave was that I wanted an equitable plan to carry out the guidelines that I gave to your before, and which I will repeat, if you want to now. Ward lines were not mentioned.

Q. Not mentioned by whom? A. By me in giving instructions to them as guidelines—to the council research staff.

Q. Why did you not mention ward lines to them? A. Because in the City Charter, it says that you will follow as nearly as possible geographical contiguous lines.

Q. It says that in the City Charter? A. It says that in the City Charter or somewhere; I think I can check it to find out, if you want me to check it.

[340] Q. Councilman Moreau, to your knowledge does Intervenors' Exhibit Number 1 accurately reflect the ward lines in the City of New Orleans——and I appreciate the difficulty of your having to read, too. A. Yes, I would say they do.

Mr. Treese: We will stipulate to that.

Judge Robinson: It is so stipulated, gentlemen.

Witness: Of course . . .

Judge Waddy: Wait, just a moment.

Judge Robinson: Mr. Moreau has some more to add.

Witness: I think we have stipulated already that New Orleans East is not on this map (indicating).

Judge Robinson: Yes.

Judge Waddy: Yes.

Judge Robinson: Very well.

By Mr. Shurtliff:

Q. Councilman Moreau, just in comparing the plan to the ward lines, now without trying to see Defendant's Exhibit Number 1 underneath, is it true that this line (indicating) does not follow a ward line? A. I don't believe it does, no sir.

Q. This line (indicating) does not follow a ward line? A. No, sir, it does not.

Q. This line (indicating) does not follow a ward line? A. Let me look at it (examining the map) and see. [341] No, sir, it does not.

Q. In your opinion, sir, is the fact that these lines do not follow the ward lines, is that important to the plan? A. It's important that they don't—I mean, it's not important that they do follow natural lines.

When you get into this line right here (indicating) you come across here and cut down—I think this might be St. Bernard which is a major thoroughfare—and come back down this way (indicating), and you've got the natural boundaries. Your parish line here (indicating), your river here (indicating), your river here (indicating), your Jefferson Parish line over here (indicating).

Q. What is the name of the boundary here (indicating)? A. It may be Fleur de Lis or Canal Boulevard; I just don't know which one it is. I don't know which one it is, but it's one of the main thoroughfare streets we have there.

We have in New Orleans neutral ground streets. The qualification of a neutral gound street is a street that is one way on side, one way on the other side, and you have a neutral ground or green area that may vary from ten to fifty feet wide due to the fact that we have underground canals going under the neutral grounds.

Mr. Shurtliff: I have no further questions, Mr. Moreau, thank you very much, sir.

Judge Robinson: Very well. Just before you resume [342] your seat, Mr. Moreau—is there going to be some further cross-examination?

Mr. Cotton: Yes, Your Honor.

Judge Robinson: Well, would you resume your seat, then, sir?

(Witness resumed the stand)

Judge Robinson: Do you need the maps, Mr. Cotton?

Mr. Cotton: For my convenience, Your Honor, I might refer to them from time to time, but I won't be needing them for my examination.

Judge Robinson: Very well. You may proceed, Mr. Cotton.

By Mr. Cotton:

Q. Sir, my name is Charles Cotton (spelling out) C-o-t-t-e-n. A. Thank you, sir.

Q. I think you testified, Councilman, that you were elected to your at-large position in 1969? A. Yes, sir.

Q. Now—after your election did you make an analysis on a precinct basis as to where you votes came from? A. No, sir.

Q. Have you ever after being elected to any elective office made an analysis on a precinct basis? A. Only from what the newspapers published.

[343] Q. Did the newspapers publish an analysis after your councilman at-large election? A. Yes, sir, they did.

Q. What was the percentage of the black electorate in the City of New Orleans? A. I haven't the slightest idea,

Mr. Cotton, what percent of black or white votes I received.

Q. I think you testified earlier than when you ran for a district—you were previously a district councilman? A. Seventh and Eighth Wards, yes.

Q. Now which District would that be? A. That would Seventh and Eighth Ward, District D.

Q. District D. I think you testified that when you ran for that post that you received forty percent black votes? A. No, sir, I said approximately forty percent of the population of black and it may be high on reconsideration, because it's probably the population at this time, as I was told by Mr. Lambert, the population at that time may have been around thirty percent, I really don't recall.

Q. Okay, did you . . . A. I want to make it clear that I did not state that I got forty percent of the black votes.

Q. I am not trying to pin you down to a particular figure, Mr. Moreau. A. Yes.

[344] Q. After your election in 1969 to your present position, did the newspapers report what percentage of the black electorate supported you? A. No, not to my knowledge—they may have, but not to my knowledge.

Q. You have no knowledge of what percentage of white votes or black votes you may have received? A. Absolutely not.

Q. This would be applicable to any elective office that you may have run for since? A. Absolutely.

Q. Now . . . A. May I understand your question, that an analysis of any number of votes . . .

Q. What percentage, for instance. I think you stated, and correct me if I am in error, that when you were councilman of District D, you were in a campaign in which you received approximately forty-six percent of the black votes I received. I never analyzed that.

Q. Okay, it's my mistake.

Prior to 1969, what other elective office did you hold in the City of New Orleans? You stated you were councilman of District D? A. Yes, sir.

[345] Q. Other than that position? A. I was elected to the State Legislature in 1963 and took office in 1964 and

served for two years in the State Legislature when I ran for the City Council.

Just to clarify, to help you out, Mr. Cotton, the district I represented the State Legislature consisted of one ward, which is the Seventh Ward, which was a part of District D at that time, and still is.

Q. And at that time was District D on a population basis majority whites or majority blacks? A. I'm sorry, I didn't hear you.

Q. At that time when you held the position as district councilman of District D, was that district predominantly white or predominantly black? A. Predominantly white.

Q. Now do you know the percentage? A. No, sir, I don't.

Q. I think you further stated that since you have held elective offices, you have to the best of your ability tried to represent all of your constituents irrespective of race. A. Yes, I hope I have.

Q. And you also stated that based on your knowledge, if there had been any block voting, it has been been basically on the part of blacks, is that correct? [346] A. Yes, sir, as I say, that based on newspaper reports that came out, which I cannot verify because these are newspaper reports and columnist reports, in the Touro-Dupontier (phonetic spelling) election there was a black and white issue, unfortunately, brought into that, and it was pointed out quite obviously, that this was block voting by the blacks.

Q. Okay. And that election? A. Yes, that was 1960, by the way.

Q. And who prevailed in that election? A. Murphy Touro (phonetic spelling) won the election.

Q. Did he receive the . . . A. According to the reports, Mr. Dupontier received the black votes.

Q. What percentage of the white electorate voted for his opponent? A. Unfortunately, Mr. Cotton, I don't observe statistics too much, and I wouldn't know that.

Q. But you do maintain that only the blacks voted in the block at that time? A. No, sir, I just maintained that

only the blacks voted because the Eighth Ward, which is predominantly white, they voted in the predominantly white block vote.

Q. So there are some instances . . .

Q. Oh, there are many instances, I though I had testified to that before, that there are instances where you [347] have block voting in black and white.

Incidentally, we are now running into Latin American voting in New Orleans.

Q. Is it fair for me to say that New Orleans is a city in which block voting is a predominant characteristic? A. No, sir, I would say it is isolated, sir, rather than predominant.

Q. Isn't it true, sir,—I think you testified that you were one of the first to endorse Judge Israel Augustine? A. That's right, he is a personal friend of mine, a lifelong friend of mine.

Q. And isn't it also true he had the support of the mayor? A. I don't recall.

Q. Okay. A. Who do you mean, Mayor Landrieu?

Q. Yes. A. Yes, I think he did, yes.

Q. And would you say that the mayor's support was aggressive support? A. I wouldn't know.

Q. Did the mayor use media to—— A. I wouldn't know.

Q. Okay, what other black candidates have you supported? [348] Since you have held elective office. A. I supported Dr. Spears who ran for the school board.

Q. Okay. A. And I opposed Mr. Moriele, who is black, of course, when he ran against me.

Q. Okay. A. And of course, when he ran for judgeship I opposed him again.

Q. You opposed him again, that was recently. A. I think about six or eight months ago.

Q. Okay, Council Moreau . . . A. Incidentally, may I just add for the Court's information, we are not permitted to actively—or a school board member is not permitted to accept the active endorsement of any elected official of a political organization. So that support would be on the

basis of asking people to vote and contributing to the campaign, and so forth.

Q. Okay. Did you support Mr. Williard. A. Yes, sir, Elliott Willard, I supported him for the school board.

Q. And what was the result of that election? A. He lost.

Q. Who did he lost to? A. He lost to a white man.

[349] Q. And Mr. Willard is black? A. He is black and a very personal friend of mine.

Q. Did you support Mr. Nils Douglas in his campaign? A. No, I don't believe I supported Mr. Douglas.

Q. Could you identify the position that Mr. Douglas ran for? A. I really wouldn't know what he ran for. It may have been the House of Representatives, I don't know.

Q. Did you support Mr. Larry Kaitz?

Mr. Stoner: If Your Honor . . .

Judge Robinson: How much more of this, Mr. Cotton, do you have? I think I see your objective, but you have been through about a half dozen different examples.

Mr. Cotton: Yes, Your Honor. I'll move right along.

Judge Robinson: Well, I asked you a question. I don't mean to cut you off. How much more of this do you have?

Mr. Cotton: Only a couple more questions, Your Honor.

Judge Robinson: You have an objection, do you, Mr. Stoner?

Mr. Stoner: Yes, I was objecting to the line of testimony. I allowed this to go on . . .

Judge Robinson: I think it's relevant, but I think it's getting accumulative.

[350] Judge Waddy: Yes, cumulative.

Mr. Cotton: Okay.

Judge Robinson: Why not move on?

Mr. Cotton: Yes, I will move on, Your Honor.

By Mr. Cotton:

Q. You stated that you have supported all of your constituents in all of the elective offices in which you have held, is that correct? A. I've done what, sir?

Q. You have served irrespective of race or color all of your constituents? A. I hope I have, yes.

Q. Do you believe that based on your voting record in those elective offices, you have represented the interests and aspirations of blacks? A. I certainly have, sir.

Q. Okay. Do you recall any issues in which the interests of your white constituents was at odds with the interests of your black constituents? A. Yes, sir, and I will be glad to relate it to you.

Q. Would you relate some of those instances? A. In 1968, we passed the ordinance or motion creating the Human Relations Committee in New Orleans. The purpose of this committee was—after 1966 incidents were high and so forth, and the purpose of this committee was to serve as an [351] arbitrator and the people who served on the committee were elected by the people.

Shortly thereafter, the New Orleans Municipal Employees Council which for years had been recognized, not as a negotiating party, not a negotiating body because they were not a union body, but as a representative of the employees.

The New Orleans Municipal Employees Council refused to admit blacks. I met privately, without any publicity, with a man by the name of Toby Ballas (phonetic spelling) who started in the organization and asked him to reconsider his viewpoint. He told me that he would, and then they had a meeting and either the board of directors, or the group, I don't know what it was, but anyhow, the answer was that they would not admit blacks to their organization.

I then spoke to Monsignor Greenley who was, I think at that time, and may still be, an executive with the Employees Relations Council, the Human Relations Committee, who is a white priest, and I told him, "Father, if we can resolve this thing, fine and dandy; if not, I am going all out".

So Mr. Ballas appeared before the City Council and we questioned him on the admission of blacks and I brought

out the point, "did he admit everyone", and he admitted that he did not admit blacks. He accused me publicly of being a racist.

He further—excuse me, he is a Civil Service [352] employee—accused me of using that to gain political votes. He could accuse me of being a racist, that is his privilege, as a narrow-minded man; but when he stepped in as a Civil Service employee and accused me of using that to get votes, that's when I wanted to step in to the Civil Service Commission.

I was advised by a friend of mine that due to Mr. Ballas' physical condition not to do so. But I have a letter which I wrote to the mayor of the City of New Orleans, and a copy was sent to each councilman, telling them that I was directing the Clerk of the City Council not to permit in New Orleans this employee council to meet in the Council Chambers any more because they were a private organization and I respected their right to exclude whomever they pleased if they were a private organization.

Therefore, without objection, based on my part and my part alone, they were refused admission.

I then wrote to the mayor of the city, since payroll deductions were permitted for their dues, and requested the mayor to stop deducting their dues, otherwise I would put in a motion preventing it. That was done.

The next thing, in the City of New Orleans you had a law that for a master plumber to obtain a license, he had to have the approval of two other master plumbers. All the master plumbers in New Orleans were white.

Mr. Touro, a very dedicated man in civil rights and [353] a friend of my family for many years, came up to me—he actively supported me every time I ran—made the situation known to me and I went before the Sewer and Water Board and gave them one of two choices: It either get two plumbers to sign this application for Mr. Delahousi (phonetic spelling), or I would take this matter up before the City Council, and I didn't mention Mr. Touro's name, that he would take legal action.

Mr. Delahousie was eventually given a master plumber's license.

Q. And I think you should be congratulated for that, Councilman Moreau. A. No, sir, I don't think I should be congratulated for doing something that I think is my job to do, sir, but I appreciate it.

Q. Were there any other issues that came before the City Council? A. Yes, sir, the Public Accommodations Ordinance—may I refresh the Court—we had a law in New Orleans which dated back for many years that a black man and a white man could not go into a public bar and drink together, and this particular issue was naturally a hot issue because you have so many so-called barrooms in the City of New Orleans, and they claimed that anyone who voted for that would be hurt politically.

[354] My name was on the Public Accommodation Ordinance to eliminate that requirement and to permit men of all race, creed or color, to drink at any barroom.

Q. Isn't it a fact, Councilman Moreau, that the National Football Players League had voted to boycott the Super Bowl to get that Public Accommodation Ordinance to not be passed? A. Yes, sir, that was only after we had gotten involved in this thing; in fact, I even took the mayor the pass—because I am a politician—and they had one barroom right opposite the Roosevelt Hotel that had caused us more trouble than anything else because they wouldn't admit blacks and I told the mayor, I said, "Mr. Mayor, why don't you have the Board of Health check it, why don't you have the fire department check it; if you are going to play politics, let's play it". That was before the football issue.

Q. Isn't it a fact, Councilman Moreau, that that ordinance was only passed after the National Football Players League voted that unless a Public Accommodation Ordinance was passed by the City of New Orleans, that the City of New Orleans would not get the Super Bowl? A. It had no bearing on me voting, myself, because it was advocated long before that.

Q. But it was voted on after, or subsequent to that edict by the National Football Players League? [355] A. As a statement of fact, it was, yes.

Q. Do you recall the Confederate flag issue? A. Yes, sir.

Q. Do you recall your position on the Confederate flag issue? A. Yes, sir, I do.

Q. And what was your position, sir? A. My position was that the Confederate flag should remain in the City Council's chambers.

Q. Did you believe that the Confederate flag offended any of your constituents? A. I don't know (pausing in thought)—yes, I assume the Confederate flag would offend some of my constituents.

Q. Wasn't there general opposition by the black community that that flag be removed, sir? A. From the vocal group, it was, yes.

Q. Wasn't it very vocal? A. Yes, it was very vocal, but I would say a minority.

Q. What do you consider a minority? A. Well, that's just it. We have the same people that come in and were complaining to City Hall about the same things over and over again.

Frankly, the Confederate flag to me no more means discrimination or segregation than that flag up there (indicating by pointing to the American flag in the courtroom), which [356] I respect to the highest.

Q. Would you consider putting a Black Liberation flag in the City Council?

Judge Robinson: Put what?

Mr. Cotton: The Black Liberation flag in City Council.

The Witness: I would rather not answer that question.

Judge Robinson: I didn't get your answer.

The Witness: I would rather not answer that question, sir.

Mr. Cotton: Your Honor, I would ask that he be instructed . . .

Judge Robinson: Do you want this question answered?

Mr. Cotton: Yes, Your Honor, I would ask that he be instructed.

Judge Robinson: I will have to instruct you, Mr. Moreau, to answer the question.

Witness: Yes, I would oppose it if it—wait, would you define what the Black Liberation flag stands for, sir?

By Mr. Cotton:

Q. Well, what do you think it stands for? A. I don't know, sir.

Q. Have you ever seen any . . .

[357] Mr. Tresse: Your Honor, I am going to object . . .

Judge Robinson: I am going to ask counsel to come up to the bench.

Bench Conference

Judge Robinson: Now, Mr. Cotton, what's the purpose of this?

Mr. Cotton: There are two things. First of all, we contend that the two at-large seats are virtually guaranteed based on the present plan that white candidates will always hold that position; secondly, Mr. Moreau has put his qualifications as a representative of all people at issue when he stated over and over again that he is representative of all the people.

We intend to show that this City Council as presently constituted has not only been insensitive, but quite often hostile to the interests of blacks.

Judge Robinson: Well . . .

Judge Waddy: Is this the place to try that issue?

Judge Robinson: Let me ask this. Do you make that claim against Mr. Moreau personally?

Mr. Cotton: Personally and against . . .

Judge Robinson: My question is do you make that claim —I understand you to make that claim generally against the members of the Council. Does that include Mr. Moreau, personally?

[358] Mr. Cotton: Personally.

Judge Robinson: What is your position, if you had an objection?

Mr. Stoner: First of all, the issue of the two at-large seats is not before this Court. This Court is being asked to approve a plan of redistricting the five councilmanic districts of the City of New Orleans. The City Charter calls for two at-large members. There have been two votes taken as the record well reflects, for proposals to increase the size of the City Council, and the only issue before the Court is the redistricting of the five councilmanic districts.

Mr. Cotton: May I add this one point, we also contend a showing of racial hostility on the part of Mr. Moreau was an ingredient in his drafting of the two plans, the present plan before the Court and a motivation.

Judge Robinson: Any other counsel wish to be heard on this before we make a ruling?

Mr. Shurtliff: The issue of the attitudes of blacks in the wards of the City Council is very pertinent to the case and we plan to put on evidence later.

Judge Robinson: That's not Mr. Cotton's tender, as I understand his explorations into the subject. In other words, it is Mr. Moreau's attitude, am I correct, is that what you are trying to probe?

Mr. Cotton: The public's attitude.

[359] Judge Robinson: May I ask this question, is it expected when this trial resumes that this will be a matter that we will get to before the day is out, that Mr. Moreau will be back, will be present here?

Mr. Stoner: We had made no decision on that.

Judge Robinson: Because one of the problems that we have is, I think, with the—Mr. Cotton, (addressing counsel) on one of your objectives, you are anticipating something that will be a part of your defense, and it seems clearly outside of the scope of any testimony that Moreau has given in this case so far.

On the other hand, it seems to me, and my colleagues will correct me if I do not represent their views, that you

are entitled to a reasonable range on your other ground. Mr. Moreau has made certain professions from the witness stand, and of course you would be entitled to make reasonable inquiry in that regard.

Judge Waddy: And he's also the sponsor of the plan—I mean, his personal attitude, I think, is relevant.

Judge Robinson: How much more, how much more do you have, Mr. Cotton, in the way of this.

Mr. Cotton: I will exhaust this point and move on to another point. I had intended to proceed to another point for the convenience of time and expediency. I will proceed now and leave it like that.

[360] Judge Robinson: The Court will indulge you within that limitation and it is understood that if at a later time you want to explore the other objective with Mr. Moreau, you will have to do that with the—following the presentation of the case by the plaintiffs and intervenors.

Mr. Treese: May I have a point of clarification from the bench? As I understand the Court's ruling, Mr. Cotton is permitted to follow along this line of inquiry dealing with pure speculation. If the issue were presented to the City Council of New Orleans in regard to a Black Liberation flag how would he vote?

Is Mr. Cotton permitted to continue hypothetical questions such as that, or is he restricted to actually constructed issues before the City Council?

Judge Robinson: If the form of questioning would have a tendency to develop by way of the witness' responses, attitudes might be relevant issues in the case.

Mr. Treese: I will respectfully represent to the Court that it would require deliberation, meditation and response from the constituents to ask this councilman to in effect cast a vote for the first time having heard the issue before the first time without having that response from his constituents, I don't think is reflective how he actually might vote under ordinary circumstances.

He has testified he voted for the Confederate flag

[361] Mr. Stoner: That's an issue.

Judge Waddy: We have passed that issue.

Judge Robinson: The question was put to Mr. Moreau and I believe more than once, and answered on direct examination with reference to his responsiveness to his constituents.

Mr. Treese: Yes.

Judge Robinson: Obviously, there are various ways to test on cross-examination a witness who has professed that on direct examination.

The Court's ruling will give Mr. Cotton reasonable range to do that. The Court's ruling will not permit him to develop testimony leading to his other objective, which in the Court's view is more directly related to the presentation of the intervenors' case and the matter at this time is outside the scope of anything I can recall.

Mr. Cotton: Mr. Moreau testified to it, and that clarified the ratification.

(End of bench conference.)

Judge Robinson: I don't know whether a question was pending or not, but whether it was or not I think you had better restate the question that you want the witness to answer.

Judge Corcoran: I would like to go on record as saying I would strike the question and answer.

Judge Robinson: You may put your question, Mr. [362] Cotton, to the witness.

By Mr. Cotton:

Q. I believe, Mr. Moreau, I asked you if any of your constituents desired to have the Black Liberation flag placed in the corridors of these Council Chambers? A. Not to my knowledge.

Q. Would you vote in favor of that?

Judge Waddy: He's answered that question.

Mr. Cotton: I was asked what was the last question.

Judge Robinson: No, I said I didn't know whether there was a question pending.

Judge Waddy: Go to your next question.

By Mr. Cotton:

Q. Now, Mr. Moreau, you stated that you had some reservations about the plan offered by the NAACP, is that correct? A. Yes, I think I stated those facts.

Q. And it had to do with the demarcations around the port area? A. Yes, sir, in the area below the E, between the St. Bernard Parish line and District D which eliminated the riverfront.

Q. Isn't it a fact, Mr. Moreau, that you publicly stated on the media that you would vigorously support the NAACP Plan? [363] A. No, sir. The news media stated, "Moreau supports NAACP Plan", and I have the newspaper clipping with me, and later on it goes on to clarify that point where I stated that the NAACP Plan had certain factors of it that were good and would be considered and A and B were those two good points.

Q. You never stated that you would promote the NAACP Plan? A. No, sir.

Q. You never publicly stated that? A. No, sir.

Q. Have you ever given any interviews to the news media? A. Oh, hundreds of interviews.

Q. Television, radio in connection with your support of the NAACP Plan? A. They may have asked me about the NAACP Plan and I said that we would consider the NAACP Plan because I thought it had some good features, but there were some things in the NAACP Plan that had to be worked out.

Q. And if we showed you an interview which you gave to a media in which you stated that you would support the NAACP Plan, would you say that at that point when you gave the interview that you weren't favoring the NAACP Plan?

Mr. Stoner: I object. I think this is a speculative question.

[364] Judge Robinson: Do you have such a document?

Mr. Cotton: I do, Your Honor.

Judge Robinson: You will be permitted to show it to the witness and then put your question to him.

Mr. Cotton: You also stated, Mr. Moreau, that . . .

Judge Robinson: Well, do you want to do that, Mr. Cotton?

Mr. Cotton: I think, Your Honor, I will use that opportunity to . . .

Judge Waddy: Well, then, are you withdrawing the question?

Mr. Cotton: Yes I will withdraw the question and I will use that opportunity when the intervenors puts on its case.

Judge Robinson: Very well.

By Mr. Cotton:

Q. Now Mr. Moreau, you stated that you reside roughly in this area (indicating on the map)? A. Yes, I imagine. I reside in the approximate area, yes.

Q. You also stated that there were blacks who resided in that area? A. One, Dr. Strange, lives about a hundred fifty yards down the street, and about five hundred yards, there are numerous blacks that live in that area on Marabeau.

[365] Q. Numerous blacks? A. Numerous blacks. Well, Park Chester is one of the concentration areas. If you get your maps out, well, you can see it right there. The Park Chester (indicating by pointing to one of the maps displayed) you can see it, the red dots right below that (indicating), right there where your thumb is—your left thumb.

Q. (Indicating by pointing to a spot on the map)? A. Yes, sir.

And, incidentally, that is not updated because there are more blacks that have moved in that area since then.

Q. Would you say it's your—the district in which you live, what percentage of blacks live in that area, what percentage of blacks? A. Would you define the area, sir?

Q. The area where you reside presently. A. How big is that area, Mr. Cotton?

Judge Robinson: Are you talking about the blocks, same ten blocks?

The Witness: Oh, no, sir; no, sir. There is one black family within about a block of me and there may be about fifty or sixty within about five blocks of me.

Mr. Cotton, don't let me confuse you. I did say my mother and my uncle and two cousins live in a completely black neighborhood.

[366] By Mr. Cotton:

Q. And which area is that? A. That's Lafrenier and Republic Streets.

Q. And how close to the St. Bernard Project area is Lafrenier? A. Lafrenier?

Q. Yes. A. Oh, I'd say it's only about four blocks from the St. Bernard Project area.

Well, now, wait a minute. Let's put it this way, the Lafreniere Street runs through the St. Bernard Project area, but where my mother lives and where I own a home, which I rent out, Republic and Lafreniere is about four or five blocks away.

Q. Now you stated that one of your primary considerations in approving the plan in question was not to place an incumbent against another, is that correct? A. No, sir, positively. Would you repeat the question, sir?

Q. I think you testified that one of your considerations in arriving at which plan you would endorse was not to put any of your fellow councilmen against each other? A. Absolutely not. I stated quite the contrary. I state that this was immaterial to me whether one of them ran against the other.

[367] Q. Didn't you state that although they are personal friends, you are cast sometimes in political opposition and for that reason you did not want to be an author of the plan that would have pitted one against the other? A. No, sir. After the plans were introduced and after the addresses were furnished to me—or the plan was furnished to me, I made the comment that "I am glad that two of

the councilmen were not running against one another, so they could not accuse me of 'Parson's Politics' ", that I was trying to eliminate one of the people from the City Council.

Q. Did you state your knowledge about the differences between the plan before the Bar and the NAACP Plan? Do you know the differences?

Judge Waddy: This is repetitive. He's testified to that twice, I believe.

Mr. Cotton: I'm using that as a foundation.

Judge Robinson: Well, let's get to your quetsion. We all understand.

By Mr. Cotton:

Q. If the NAACP Plan had been introduced and endorsed by you and had to be put to the Council, the presently constituted Council, in your estimation based on your discussions with your fellow Councilmen, would it have passed?

Mr. Stoner: I object, Your Honor. I think the question is . . .

[368] Judge Robinson: Yes, that calls for an opinion. What value does the statement have?

Mr. Cotton: Your Honor, I'm merely trying to show the fact that there were two incumbents who would have been pitted against each other in the NAACP Plan, that accordingly to the voting procedure of the City of New Orleans City Council, the plan could have passed by five-two vote.

Judge Robinson: I will sustain the objection.

Mr. Cotton: Your Honor, since the Court has taken the position that we shall proceed in the intervenors put on its case . . .

Judge Robinson: With the intervenors case, yes.

Mr. Cotton: Yes, Your Honor. . . . I would reserve the rest of my questions to Mr. Moreau at that point.

Mr. Halpin: May we point out to the Court, however, by note when we are talking about the intervenors' case,

by no means are we conceding the point that the burden is upon the plaintiffs, the City Council of the City of New Orleans to prove that the two-at-large districts are not racially discriminatory; it's not our burden to prove that they are.

Judge Robinson: The basis of the Court's ruling is you are limited on cross-examination to the scope of the direct examination.

Mr. Halpin: Thank you.

Mr. Cotton: Thank you.

[369] Judge Robinson: Now is there any redirect examination?

Mr. Stoner: No redirect examination.

Witness: May I be excused?

Judge Robinson: I was just about to put the question to counsel.

May Mr. Moreau be excused? Everybody is going to be excused for awhile very shortly, out of sheer necessity (smiling).

What I am trying to find out is this, does any side in this litigation expect to have Mr. Moreau back as a witness; I understand the intervenors may wish to do that at a later time.

Mr. Halpin: Particularly, Your Honor, if there is some space between today's hearing and the continuation of the hearing, we probably would.

Judge Robinson: I presume that we can arrange to let Mr. Moreau know in a reasonable space of time ahead in the event his presence as a witness in the case is further desired.

Mr. Halpin: Yes, Your Honor.

Judge Robinson: With that limitation and subject to the reservation (addressing witness), you may be recalled.

Witness: Not today?

Judge Robinson: No.

Witness: I want to get back.

[370] Judge Robinson: Thank you.

Witness: Thank you.

Judge Robinson: There was a question or so that Mr. Halpin wished to address to Mr. Pezant based on some documents that I presume have been located by now.

Would you resume the stand, please (addressing Mr. Pezant)?

(Whereupon Mr. Pezant resumed the witness stand.)

James N. Pezant

Cross-Examination (Cont'd)

By Mr. Halpin:

Q. Mr. Pezant, do you have with you now the documents which you referred to earlier as Mr. Salatich's summary of the guidelines for avoiding racial discrimination in the drafting of the plan? A. Yes, sir, I have a letter that is dated November 23, 1971. It was addressed to Councilman Moreau as President of the City Council. It is signed by Mr. Salatich and approved by Mr. Blake Arata, the City Attorney, and it is the opinion of Judge E. Gordon West in the reapportionment of the House of Representatives and the Senate of the State of Louisiana.

Q. Just for purposes of identification at this point, is there not also attached with those letters a page on which the present incumbent councilmen are named with their addresses and their ward and precinct locations? [371] A. Yes, sir, there is.

Q. And is that all of the materials which were appended to the letter? A. In this particular letter, yes, sir, and I don't know why it is appended.

Mr. Halpin: If we will, we can stipulate, I think, to the admission, can we not? It could be Intervenor's . . .

Mr. Stoner: We will put it in as our exhibit.

Judge Robinson: You want to put it in?

Mr. Stoner: Yes, Your Honor.

Judge Robinson: All right.

Deputy Clerk: Plaintiffs' Exhibit Number 16 marked for identification.

(Plaintiffs' Exhibit Number 16 was so marked for identification.)

Mr. Halpin: And can we also stipulate that the yellow highlighting on the letter was done by Mr. Eckert?

Mr. Stoner: Yes, sir.

By Mr. Halpin:

Q. Now, Mr. Pezant, with this document before you, is it not true that you were specifically aware of Judge West's language which is stated on page 3 of the letter that:

> "When possible, the plan should follow parish and ward lines as well as historical and natural boundaries . . ."

[372] A. Which part of page 3 are you on, Mr. Halpin?

Q. I am on the top of page 3. A. Yes, okay.

Q. Okay, second sentence:

> "But the use of such boundaries canot be tolerated if either the purpose or the result is to deprive the people of the benefit of the one-man one-vote principle, or to deprive them of the anti-dilution principle now firmly established in the law."

A. Yes, sir.

Q. Were you also then aware of Judge West's decision, Judge West's language stated on page 4 of the letter, third sentence:

> "The Senators made much of the need to adhere to historical boundaries which they assert are the ward lines in this area. The contend that any deviation therefrom is irrational and contrary to state policy; but as brought out in the evidence, it was this policy and these historical boundaries that produced but two Negro legislators since Reconstruction days."

[373] Were you aware of those guidelines in Judge West's opinion?

Mr. Treese: At this point, Your Honor, if I might, I believe the witness has testified that he has read the letter;

he is aware of it; it speaks for itself. This line of questioning simply asks whether he is aware of it again.

Judge Robinson: Yes.

Mr. Halpin: The only purpose of the question is that it is a long letter and to make sure that Mr. Pezant is aware of the particular areas of the letter to which my questions will be addressed.

Judge Robinson: How many other areas . . .

Mr. Halpin: That's the last predicate.

Judge Robinson: All right.

Judge Corcoran: Just ask him if he has read the whole letter.

By Mr. Halpin:

Q. You have, in fact, read the whole letter and based your drafting of the plan upon the guidelines stated in that letter? A. On this, plus the—I don't know what to call them, Your Honors—the rules of the Attorney General, some forty- or fifty-page submission showing what the U. S. Attorney General's Office—how they judge redistricting plans, and things of that nature.

Q. Are you referring then to procedural guidelines [374] of the Justice Department? A. All right, sir, I'll accept that.

Q. Okay now, the letter also indicates that the United States Court of Appeals for the Fifth Circuit reversed Judge West relative to four Senate districts.

Did you interpret this to mean that you could follow ward lines even at the expense of diluting black voting strength? A. No, sir. I made the statement that I observed to the best of my ability the guidelines in this (indicating the letter) plus another document or two. You have completely overlooked, at least to this point, some of the other considerations that are contained in this digest, or whatever you want to call it.

I did not think that historical guidelines could be observed to the—how did you phrase it—"at the expense of" diminution of black voting strength.

Q. Now, Mr. Pezant, is it not true that the reason that names of the incumbent councilmen with their addresses, wards and precincts were attached to this letter for—under your perception, for the reason that this was a subtle message to you to make sure that none of these gentlemen fell into the same district? A. I don't think these—I don't think so. These names were not submitted by Mr. Salatich, is this what you [375] are implying. I don't even know how it got attached to this. I didn't need any sheet to show me where the incumbent councilmen lived. I have stated in open court that I was aware of the residences—not the street addresses, but the residences of the incumbent councilmen.

Q. Are you stating that this was not attached to the letter that you received? A. To the best of my ability, this was not attached to the letter when I received it from Mr. Salatich.

Q. And you don't know how it happened to get attached now? A. I honestly don't know why it is attached.

Mr. Halpin: I have no further questions.

Judge Robinson: Gentlemen, does that complete the examination of this witness?

Mr. Treese: No further questions of this witness, Your Honor.

Judge Robinson: Beg your pardon?

Mr. Treese: No further questions of this witness.

Judge Robinson: Mr. Shurtliff?

Mr. Shurtliff: Just briefly, Your Honor.

Judge Robinson: All right, briefly, sir.

Mr. Shurtliff: If I may approach the witness (handing a document to witness).

[376] Cross-Examination

By Mr. Shurtliff:

Q. Mr. Pezant, you have referred a number of times during the course of your testimony to guidelines or materials supplied by the Attorney General of the United States.

I have handed you a document, is that the document which you have referred to, or a copy? A. Well, sir, it could be, but I have no way of knowing because the information I have is on a completely different type of print. It was not printed in this form. I have seen this for the first time. The information I received is contained in our files.

Q. Do you have that copy?

(Witness displaying document handed to him by Mr. Shurtliff to Mr. Treese)

Q. (repeating) Do you have the information that you received, sir? A. Yes, sir, I have it. We were just looking at it a few minutes ago.

Judge Waddy: Can you stipulate that this is a copy of the guidelines?

Mr. Treese: We'll stipulate.

Judge Waddy: Let it be marked.

Mr. Shurtliff: We don't know that it is.

Mr. Treese: I have seen the other document and [377] this is a better copy. We will stipulate that that's the exact copy.

Judge Waddy: Well, let it be marked.

Deputy Clerk: Defendants' Exhibit Number 27 marked for identification.

(Defendants' Exhibit Number 27 was so marked for identification.)

Mr. Shurtliff: I have no further questions, Your Honor.

Judge Robinson: I take it, counsel, that this finishes the examination of Mr. Pezant, is that correct?

Mr. Treese: Correct.

Judge Robinson: May he be excused for good in this litigation?

Mr. Halpin: There may be some possibility, particularly if there is an intervening time space, that we would call him again.

Judge Robinson: Mr. Pezant, you are excused, but you are subject to recall by the Court for further testimony in this case, in which event you will be given due notice.

Witness: Thank you, sir.

Judge Robinson: Very well.

(Whereupon, witness withdrew from the stand, having been excused by the Court.)

Judge Robinson: Now, gentlemen, we have reached [378] the point where we will have to take a recess in this trial, and it's going to have to be a sizable recess. I am going to hand list the problems with counsel in just a few minutes, since it became apparent yesterday that this trial could not possibly be completed on today, all members of the Court have consulted their respective calendars and their outstanding obligations and their plans, and the earliest date that the Court will be able to resume the trial of this case is October 17th. I appreciate the fact that that may create some problems which, perhaps, we should address at this time.

As you gentlemen know, this litigation was filed on July 25th. This three-judge court was instituted on July 30th. There was a motion to advance this case for hearing on the merits and it gave as its reason the urgency of setting the primary qualification date sometime later on this month.

In response to that request, the Court granted the motion, it set the case for hearing commencing on yesterday; it called on the parties for statements of their legal positions to be filed by day before yesterday.

I say all that, perhaps unnecessarily, because it is perfectly apparent that this Court has responded with all possible speed to the exigencies of this situation.

Now on yesterday we had this hearing commenced, the Court was careful to make inquiry as to what the time demands would be. Counsel gave the Court estimates that in toto two [379] days time would be required. The Court facing some difficulty in doing even this, managed to clear the two days.

At that time on behalf of my colleagues, I warned counsel, as I thought they were entitled to know, that if the estimates did not stand up, there would be difficulty with

reference to completing the trial of this case because that was all the Court could do.

Now it is apparent that that simply was not enough time. This is an important case.

Counsel, the Court knows, have cooperated in every possible way to proceed as expeditiously as possible, but a case of this sort simply takes time to present, and it goes without saying that this Court will have to be indulged a reasonable opportunity to decide this case once the submissions have been completed.

We have taken all that into consideration and it is simply not possible for the Court to reconvene for the purpose of this litigation until October 17.

Now it seems to me that a few suggestions would be in order: (1) —and I have not consulted with my colleagues on this, the Government has not filed any answer. It seems to me to be desirable to have the Government file an answer; we have a statement of your position, Mr. Shurtliff, but can't you get an answer in and can't you get your answer in much less than the normal sixty days that you would have to respond?

[380] Mr Shurtliff: Well, Your Honor, we will do that.

Judge Robinson: Very well. I take it that with the Government's answer getting in, we would need nothing further to complete the record insofar as the pleadings may be concerned, is that correct, gentlemen.

(All counsel nodded in the affirmative.)

Judge Robinson: All right. Now, I suppose some consideration should be given to the problem which is occasioned by the apparent need, although I understood on yesterday from representations by counsel that it turns out to be certainly something less than an absolute need, for the setting of qualification dates some time later on this month or the first of September, and even more particularly, the November primary because with a resumption date in October, there is only a relatively small space of

time until—when is it, November 10th, when the primary is to occur.

And perhaps looming large in all of this is the effect of the litigation pending in the Eastern District of Louisiana, which came to my attention, and I believe to my colleagues, only on yesterday.

Now, gentlemen, we are anxious to cooperate in any way we can, but that is the situation. If there is anything to be addressed to the Court, anything that we might be helpful on, we are here to do it and to do it now.

Mr. Stoner?

[381] Mr. Stoner: Yes, Your Honor. We have anticipated the problem that the Court has addressed itself to and we have prepared an order, extending into the future, the qualification date which presently is set, I understand, at August 31st, 1973. And I would submit . . .

Judge Robinson: Instead of September the first.

Mr. Stoner: Yes . . . I would submit to the Court a proposed order as to the date.

Judge Robinson: Would you give us an opportunity to look at it.

(Mr. Stoner handed document up to the Court.)

Judge Waddy: I would also like to know from counsel whether or not the Eastern District of Louisiana has set any date for the plan that it has ordered to a master for the presentation of such plan.

Mr. Stoner: Your Honor, I have been informed that a master has been appointed by that Court and that the master has been requested to—or will commence hearings with respect to a proposed plan as of Tuesday of next week.

(Addressing other counsel) Is that correct?

Mr. Halpin: That's not quite correct. My understanding with everything I've gotten from that Court so far is that the Court has stated its intention to appoint a master and will formally issue an order appointing that master soon.

[382] And it is further my understanding, and I think

Mr. Salatich was present in the conference there, that the Court's appointment of a special master in that case is purely as a precautionary measure and that is that when —that if there would be the possibility, that there would be the necessity for the Court to develop a plan, that it would do so; but if the Court was fully anticipating, as we were, that this litigation was going to be completed within time, and so our position, we also represent the plaintiff in that Court, aud our position in the Eastern District will be that that Court should hold in abeyance whatever action relative to drawing a plan and it would be further our position in this Court.

Judge Robinson: Pending what determination?

Mr. Halpin: Pending the determination in this Court to avoid the judicial conflict. It would be further our position in this Court that this Court should not only enjoin the qualification date as proposed in the order, but should at this time enjoin the election for all members of the City Council until this case can be heard and fully determined.

Then we will move in the Eastern District to have that Court hold its action in abeyance, which it has no jurisdiction over enjoining the election to begin with. This Court has that jurisdiction and could do it.

[383] Judge Robinson: Mr. Shurtliff——

Judge Waddy: Had you finished stating your position, Mr. Stoner?

Judge Robinson: Mr. Stoner's request had . . .

Judge Waddy: Had you finished your . . .

Mr. Stoner: Oh, no, I had not.

Judge Robinson: Oh, well, go ahead.

Mr. Stoner: No, I had not. I addressed myself only to the continuance of the qualification date.

We would like to—we would agree with the handling of the litigation in the Eastern District. We would ask this Court to enjoin that Court from proceeding further with that case until the matter here before this Court is disposed of.

We believe that this Court . . .

Judge Waddy: The best thing to do would be to enjoin the parties.

Mr. Stoner: Enjoin the parties, that's right.

Judge Waddy: I don't know about enjoining the Court (smiling).

Judge Robinson: Don't we have before us at the present time all who are parties in the Eastern District of Louisiana?

Mr. Halpin: Yes, sir.

Judge Robinson: You—and when I say "you", I'm [384] speaking to counsel for the intervenors, who are counsel for the plaintiffs in that case . . .

Mr. Halpin: Yes, sir.

Judge Robinson: . . . it is your disposition to delay further proceedings in that case pending the consideration and disposition of this case?

Mr. Halpin: Yes, sir.

Judge Robinson: Can't you gentlemen make a stipulation here and now that you are going to do that and let's get that problem behind us?

Mr. Halpin: I can certainly agree to that, Your Honor. I think that Mr. Stoner, and so forth, can, too. There is —one of the problems in this particular case has been that the City Counsel was never quite sure who was representing them, and so forth and so on. I think Mr. Salatich represents some and not the others.

Mr. Salatich: If I might make a point . . .

Judge Robinson: Yes.

Mr. Salatich: All counsel in the Eastern District of Louisiana are not here. I represent the mayor and the City of New Orleans in that particular litigation. Altogether there are ten different defendants, the City and the mayor, the City Attorney's office represents . . .

Judge Robinson: I see.

Mr. Salatich: . . . the Council itself is represented [385] by counsel that was appointed last Wednesday morning. They are not here. The attorneys for the individual councilmen are not here. And we only have in reality here as

far as the defendants are concerned attorneys for only two of those defendants.

Judge Robinson: Why can't this be done, gentlemen. All counsel, and I take it all litigants are right here in New Orleans, right?

Mr. Halpin: Yes, sir.

Judge Robinson: You wouldn't anticipate, would you, gentlemen, there is going to be any objection to the suggestion of Mr. Halpin and his associates that that litigation be held—I mean nobody's going to kick about that, I suppose—why don't you gentlemen get together and fashion a stipulation and forward it on to the Court as soon as it conveniently be done, and that will solve that much of the problem.

Is that suggestion acceptable to all concerned?

Mr. Gorman: Your Honor, the United States really doesn't have much stake in whether or not the mayor and the Louisiana Court . . .

Judge Robinson: You are not involved in that at all, as I understand it?

Mr. Gorman: No, Your Honor, but I think we have an obligation to the Court to advise you that under Section 5 [386] it may be that this Court has limited authority and the matters before this Court are for either the entry of declaratory judgment or denial of declaratory judgment.

It is quite clear by operation of law under Section 5, that they do not hold re-election under using the plan . . .

Judge Robinson: That's the matter I thought we were going to get to, but the plaintiffs and the intervenors and the Court, as well, had a little anxiety as to what was going on in the Eastern District of Louisiana while the case was pending here. The suggestion made by the Court was simply to put that matter at rest so that we could get that behind us and get to the other problem to which you are addressing yourself now.

Mr. Gorman: You are talking now about the plaintiffs and the intervenors agreeing in the District Court in Louisiana?

Judge Robinson: No, they will agree among themselves that no further proceedings will be sought or had in the litigation pending in the Eastern District of Louisiana pending the consideration and decision of the case before this Court.

Does that put it accurately, gentlemen? Is that the understanding?

Mr. Gorman: We have no problem with that, Your Honor.

[387] Judge Robinson: Very well, I wouldn't have thought that you would.

Is that the understanding, gentlemen?

Mr. Halpin: That's the understanding. There could be some possibility that it would be of some advantage to allow the special master, just as a preventive device, to start developing a plan, while we are moving so . . .

Judge Robinson: My purpose at this time, Mr. Halpin, is simply to explore the possibility of the parties agreeing. If the parties can't agree, that's another matter the Court would have to deal with in a different way; but I had gathered based on the representation that you, yourself, made.

Mr. Halpin: Yes, it is possible to agree and . . .

Judge Robinson: . . . and this was the easiest way to put this matter at rest, at least for the duration of this litigation.

The only thing that I am asking for now is my statement of the Court's understanding as to whether the agreement is accurate.

Mr. Halpin: It is accurate.

Judge Robinson: And you gentlemen will get together and fashion a suitable stipulation in New Orleans to that effect and forward a copy on to this Court.

Mr. Halpin: Yes, sir.

[388] Judge Robinson: Is that agreeable to you gentlemen?

Judge Waddy: That will be staying the proceedings in the Eastern District of Louisiana pending disposition of this matter.

Mr. Stoner: Yes. Now, Your Honor . . .

Judge Robinson: Now that brings us to a different matter, and counsel for the defendants have sort of brought it up. I take it is the same matter which you are about to address yourself, Mr. Stoner.

Mr. Stoner: Well, I was merely going to state to the Court that we were going to ask the Court to enjoin the plaintiffs from proceeding further in that case until disposition of this case.

Judge Robinson: I thought that that was settled, that they are not going to do anything further. Is that not agreeable?

Mr. Stoner: Yes, Your Honor.

Judge Waddy: You don't need to do anything if you are going to stipulate to it.

Mr. Stoner: All right, I can state that on behalf of the six members of the City Council that we represent, there is no problem in stipulating to that effect.

Judge Robinson: Well, I understand that some of the defendants are not here; it would not seem that they would interpose objections. If they do and you gentlemen have problems, [389] you will simply have to address the Court again and the Court will have to deal with it.

If, however, the stipulation holds, it certainly seems to the Court that it takes care of the problem for the immediate future and I understand the parties who are present here in the courtroom today are similarly satisfied.

Now, Mr. Stoner, we have . . .

Judge Waddy: Just a moment, Mrs. Marshall has to add more paper.

(Whereupon the judges conferred privately off the record while the court reporter changed paper.)

Mr. Gorman: Your Honor . . .

Judge Robinson: Is this Mr. Gorman?

Mr. Gorman: Yes, Your Honor.

Judge Robinson: Would you come to the lectern, please?

(Mr. Gorman approached the lectern.)

Mr. Gorman: I don't mean to make a very complex problem more difficult, but I believe that there may be problems with this Court's jurisdiction in enjoining an election in Louisiana under the circumstances.

Judge Robinson: I thought what you had said was that as matters now stand, Section 5 of its own force bars the plaintiffs from holding any election of members of the Council under the plan, that is the plan that is now before the [390] Court which recently was disapproved by the Attorney General.

Judge Waddy: It's in the statute itself.

Mr. Gorman: But that does not bar the City Council in New Orleans from holding an election, and in fact it may be required by state law to have an election as of a specific time of the year.

Judge Robinson: You are saying the election could be held on the basis in existence in 1964?

Mr. Gorman: Yes, Your Honor, and I presume, also, that because of the operation of the state law and the City Council Charter, or the City Charter of New Orleans, it has already been discussed here, there is an obligation to have elections after the decennial census is taken.

Judge Robinson: After a what?

Mr. Gorman: After a decennial census is done on an equally apportionment basis. This has not been done, so it is a clear conflict. If they have an election under the old rules, it will violate the City Charter and probably state law. They can't have an election under the new zones because it's prohibited by Section 5.

Now therefore, merely saying that they can't have a new election under the new lines does not solve all the problems. It may be appropriate because there is a case pending in the District Court of New Orleans for the parties in that litigation to iron out the state law on questions con-

cerning [391] holding elections at all this year. I believe that under Section 5, the responsibility of this Court is already met by prohibiting them from having elections propriety, perhaps, rather than jurisdiction, and this

There are two questions basically, and it is a matter of Court in the jurisdiction where the change had been made. under the new plan. And I just point this out . . .

Judge Robinson: Well, let me see if I am clear. There, of course, is the barrier erected by Section 5, the new plan, the plan before the Court, has been disapproved by the Attorney General; it has not, at least to this point, been approved by this Court. So Section 5 prohibits the use of that plan in connection with a municipal election.

Are we in agreement?

Mr. Gorman: That's correct, Your Honor.

Judge Robinson: Now you are suggesting that beyond the prohibition of the statute, it would be necessary for this Court to fashion an additional prohibition in terms of an injunction that would restrain the conduct of an election pursuant to that plan?

Mr. Gorman: I am suggesting that this Court may not do that.

Judge Robinson: May I ask—now it has been done, for example, in two recent cases in this Court, the Petersburg case and the Richmond case, am I correct?

Mr. Gorman: Yes, Your Honor.

Judge Robinson: Why was it done in those cases?

Mr. Gorman: Under the circumstances present in those [392] cases, there was not a suit pending in the Federal Court will decide whether or not a declaratory judgment will be entered with respect to the new ward lines or district lines in New Orleans. The suit pending in District Court in New Orleans has as its gravamen what the lines will look like if different districts are drawn, and therefore it may, I believe, be more appropriate for the District Court in New Orleans to make a determination whether or not any election should be held this year using the old lines.

Judge Waddy: Mr. Stoner.

Mr. Stoner: Yes, Your Honor, may I address myself to that question?

I don't know the Louisiana law, but it would seem to me that the Council of the City of New Orleans having adopted the new plan of redistricting, the old plans of the previous districts are really inoperative and no election could be held under the old plan because there is no districting under the old plan after the present councilmen's terms expire.

Judge Robinson: What you are saying is the old plan has been repealed and the second plan, although in a disapproved status, is adopted, is that it?

[393] Mr. Stoner: Yes.

Judge Robinson: Excuse me, just a moment.

(The Three-Judge Panel conferred privately off the record.)

Mr. Gorman: I think Mr. Stoner is incorrect on that.

Judge Robinson: He is correct, or incorrect?

Mr. Gorman: I think he is incorrect on that legal conclusion; I believe under Section 5, the administration or the implementation of the new voting law is prohibited until it is reviewed either by this Court or by the Attorney General and no objection is interposed, or a declaratory judgment . . .

Judge Waddy: I think we all agree to that.

Mr. Gorman: But that does not repeal pre-existing laws.

Judge Robinson: Well, isn't that a question of Louisiana law?

Mr. Gorman: But, I believe what will occur is that the repeal of the existing boundaries, districts, was made in conjunction with the adoption of the new districts, and therefore, —because Section 5 prohibits the new districts, therefore the whole enactment is invalid.

Mr. Stoner: Are you saying that it is really a conditional —this is a conditional operation of the new plan and it just conditionally repeals the old plan?

[394] Mr. Williams: Well, I researched this issue, may it please the Court . . .

Judge Robinson: Is this Mr. Friends?

Mr. Williams: No, I'm Charles Williams.

Judge Robinson: Very well.

Mr. Williams: I researched this issue sometime ago and I don't have the cases here, but within a short period of time I might be able to find the cases.

However, my understanding basically is the same as the Government's, that the idea was until such time as the plan that in a state that is covered by the Voting Rights Act is approved either by the Justice Department, or by the District Court, it, in effect, is not a law; it has not come in to replace it. I don't think it has come in now—I don't think you could say at this time that the old law has been repealed and I think that's a possibility that if it does not clearly enjoin the election, they could have an election under the old law.

Judge Robinson: Let's go back just a moment. It is clear that the plan before the Court cannot be used at the moment as a basis for election.

Mr. Gorman: Right.

Judge Robinson: Now the further question is whether there can or cannot be an election on the basis of an older plan, or on the basis of a newer plan, newer even than the one before the Court, it seems to me, is not the business [395] of this Court, at least not at this time. Isn't that it?

Mr. Gorman: I agree, Your Honor.

Judge Robinson: Is that what you are saying?

Mr. Gorman: Yes.

Judge Robinson: Would you agree to that, Mr. Stoner?

Mr. Stoner: Yes, Your Honor.

Judge Robinson: That's not within the purview of our authority in reviewing the plan which the Attorney General has now disapproved. It suffices for our purposes when we recognize that unless and until that plan is approved by this Court, the citizens of New Orleans can't employ it in

connection with the election of members of the City Council.

Now what the citizens of New Orleans may do, or may not be able to do, is another matter that is simply not before this Court. Is that correct?

Mr. Stoner: Yes, if Your Honor please.

Judge Robinson: Now, you, however, Mr. Gorman, had some idea that, perhaps, the parties need not be so hasty on their stipulation with reference to staying the proceedings in the Eastern District of Louisiana, because, perhaps something could be worked out there in terms of the new election, is that correct?

Mr. Gorman: Yes, Your Honor, and that, of course, is up to those parties and we have no interest in that.

However, I wanted to point out the complexities [396] of the problem to the Court, so that we would be aware of them . . .

Judge Robinson: Well, I would like to ask one other matter in which the Government would certainly have a vital interest. I don't know whether counsel representing the plaintiffs are in a position to make any representations, or not, as to whether there will be or will not be any elections in New Orleans based on the plan that the Attorney General last disapproved.

Are you in a position to make any representation in that regard?

Mr. Stoner: Well, I (pausing in thought) . . .

Judge Robinson: As to whether or not you are going to violate Section 5, that's really what my question gets down to.

Judge Waddy: Well, I understood Mr. Gorman to say a little while ago that he didn't intend to proceed under the new plan.

Mr. Stoner: That's right.

Judge Waddy: The question that I'm concerned with is whether or not they intend to proceed under the existing districting, or the districts which were in existence, at least, before they decided the new ones.

Judge Corcoran: That's a question for the Louisiana Court.

[397] Mr. Stoner: Yes, that's a matter of Louisiana law.

Judge Waddy: That's a matter of Louisiana law, too, but I am asking whether or not you have any information for this Court as to the plan.

Mr. Stoner: I have none. The reason the plaintiffs have brought this suit is that they wanted to have this matter determined so that they could proceed to hold elections under the new plan in November.

Judge Robinson: Let me get—let us understand. That was my understanding. Let me cut through this a little bit and get down to what I am driving at.

Is any injunction from this Court necessary? If so, why is it necessary? We have the barrier of Section 5. There is nothing before the Court that would indicate that anybody is going to try to disobey Section 5. Why do we need to enjoin it?

Mr. Gorman: Your Honor, we believe that absent some substantial evidence that one of the parties will violate Section 5.

Judge Robinson: You don't even have any threat of that, but if the situation did change from the viewpoint of the Government or perhaps from the viewpoint of the Intervenors, it would appears o be a need for injunctive relief, you could come right back before the Court and we could hear [398] you at that time.

Mr. Gorman: Yes, Your Honor.

Judge Robinson: Would that satisfactorily from all viewpoints put to rest at this point in time, at least, the question of any need for any injunctive relief at the hands of this Court?

Mr. Gorman: No, sir.

Judge Robinson: You've got some problem?

Mr. Halpin: I think that if the parties here are generally willing to indicate that they would not violate Section 5, it would certainly do no harm to have an injunction issue. It may be dealing with political bodies of this sort; it may

be a lot easier from the point of view of the City to have an explicit order enjoining them from conducting these primary elections, so forth and so on, because you do have other people involved who are not really parties in this case, but who would be better put on notice of an injunction; for example, the Democratic Executive Committee has the responsibility for calling primary elections, and there are a lot of other officials involved in this, and it is my feeling that a specific injunction from this Court would clarify matters a great deal and would not be opposed by these parties.

The second point is that we indicated that we would stipulate to holding the matter in abeyance in New Orleans, but under the assumption—and I want to make it clear—that [399] the plaintiffs in this case, the City of New Orleans, does not attempt to hold any elections; that is, that they would not attempt to hold elections, say, under the old mal-apportionment plan or run elections at-large, or . . .

Judge Waddy: Isn't that a matter for the Louisiana Court?

Mr. Halpin: Yes, sir, but I just wanted to make it clear to this Court that when I said that I would stiuplate to holding things in abeyance, it's for this Court's information so that it won't consider that I am breaking my word to this Court that that is the implicit assumption to my agreement.

Judge Robinson: Did you wish to speak on this, Mr. Stoner?

Mr. Stoner: I might say that I believe an injunction with respect to elections would be preferable.

Judge Waddy: The only basis we would have for an injuunction would be to protect our own jurisdiction. There is not even any threat as we understand it, at present to use this proposed plan.

Judge Robinson: Before we rule on this, I want to finish this. Mr. Gorman has been trying to get to the lectern on a few comments.

Mr. Gorman: Your Honor, our only point is we don't express any view on the old plan, the plan pre-existing [399(a)] under Section 5, or on a plan that might be worked out in the Eastern District of Louisiana. We are merely concerned with this Court entering an injunction that may have an effect on the litigation in Louisiana and I would think that the Court should be aware of possible problems before it does it.

Judge Robinson: Well, this Court has not at any time, so far as I know, Mr. Gorman, indicated any injunction it would possibly issue would do more than restrain the conduct of an election on the basis of the plan that is now under review by the Court.

Now does that create a problem?

Mr. Gorman: That would create no problem.

Judge Robinson: Now counsel for the plaintiffs wish such an injunction as do counsel for the Intervenors. Now what do counsel for the Government wish in this regard, an injunction or no injunction?

Mr. Gorman: Your Honor, we don't believe an injunction is necessary and we think that an injunction may be misinterpreted by either the citizens or the Court.

Judge Robinson: In what respect?

Mr. Gorman: In that it may be considered an injunction against holding elections at this time because this Court . . .

Judge Robinson: No, any injunction that this Court writes is going to be clear as to what is going to be restrained, [399(b)] so that is not going to be any problem.

Now what's the Government's view?

Mr. Gorman: We don't think it is necessary, but we have no opposition to it.

Judge Robinson: You have no opposition to it?

Mr. Gorman: No, Your Honor.

Judge Robinson: You gentlement want to get together and fashion an agreement in this regard and ask the Court to put its endorsement on it as a process agreed to by the parties?

Judge Corcoran: It would help as a practical matter. That's all it amounts to, it gives public notice.

Judge Robinson: This is all we have been talking to, whether we need to do it. I had originally thought that nobody thought that there was need. Now I understand that both the intervenors and the plaintiffs feel that there is a need and that the Government has no objection to it. That's the situation.

If you gentlemen want to do it by agreement, can you get together and can you get agreed upon the form of the injunctive order that you want submitted to the Court for its consideration?

Mr. Gorman: I should think we would be able to, Your Honor.

Judge Robinson: Now how fast can you do that?

Mr. Gorman: A couple of hours.

[399(c)] Mr. Stoner: By early part of the week?

Judge Waddy: Monday morning?

Mr. Stoner: The early part of the week.

Judge Waddy: I understand that the parties are going to do two things: (1) all of the parties are going to get together and work out a form of an injunction staying any proceedings with the use of the proposed plan; (2) the Intervenors and the defendants in the Louisiana case will submit to the Court a stipulation which they will work out with respect to how the Louisiana case will proceed from here on.

Am I correct?

Mr. Halpin: Yes, sir. I wanted to ask one more question of plaintiffs in this regard.

Is it your understanding that your parties will be able to stipulate in the New Orleans case that no elections will be held at the regularly scheduled time?

Mr. Stoner: We have not specifically addressed ourselves to that, I mean, these are the council—me and the plaintiff —however, we have been proceeding with the expectation that no election will be held under the old plan. The City

Charter requires that the city be redistricted following the decennial census.

Mr. Halpin: That's not my question.

Mr. Stoner: Since this plan is inoperative, it would be obvious that no election can be held.

[399(d)] Mr. Halpin: Under any plan?

Judge Corcoran: No, just under this plan.

Mr. Halpin: That's what I am trying to clarify.

Judge Corcoran: He is reserving the right to go ahead under the . . .

Judge Waddy: Well, if the November elections were postponed, special elections could be held, could they not?

Mr. Halpin: I was anticipating—what I am trying to get a qualification on is I was anticipating a problem with these two Courts may be in conflict, and that is, should the defendants in the New Orleans case, or the Court itself, moved to adopt a plan, say, which retained two at-large seats, but drafted into five single-member districts, we would consider that to be the plan which had been objected to under Section 5 since that was part and parcel of the plan before the Department and then we would be in the position of maybe having to ask this Court . . .

Judge Corcoran: You can't solve that case.

Judge Robinson: That's another plan.

Judge Waddy: That's another case.

Judge Robinson: That is not a plan before us.

Mr. Halpin: That's an issue before this Court, that we are trying to bring before this Court, that is, whether those two at-large seats are part of a voting change which must be considered by this Court in determining whether they are [399(e)] racially discriminatory . . .

Judge Waddy: I would think your answer will be found in the Allen case.

Judge Corcoran: We reserved on that. We haven't ruled. And anyway I'm not going to let this Court get involved with the Louisiana Court. We have no business down there.

Mr. Halpin: Well, that's what I was trying to avoid.

Judge Robinson: The only possible subject of an injunction at the present time would be an election pursuant to the plan now before this Court. That is the only plan that is before this Court. Any injunction that we enter, certainly at this time, will have to be limited to it.

Mr. Halpin: I think we could still make argument, if the time came, Your Honor, be part and parcel of the plan of the two at-large elections, that we want to enjoin the election with respect to that.

Judge Robinson: You are addressing yourself, Mr. Halpin, to a situation that may or may not occur, that is, at some future time, another plan will come into existence and you will have problems with it.

Judge Waddy: In Allen tells you exactly what to do with it.

Judge Robinson: Certainly at this time we don't have that question before us.

[399(f)] Mr. Halpin: At least, I want to raise it before the Court . . .

Judge Robinson: Now, gentlemen, just a moment.

(The 3-Judge Panel conferred privately off the record.)

Judge Robinson: Gentlemen, I have conferred with my colleagues. We will expect the consent judgment to be presented to the Court by 12 noon on Monday. Is that agreeable to you, gentlemen, 12 noon on Monday?

(All counsel nodded in the affirmative.)

Judge Robinson: Just as a reminder, might I say to you, you might get some assistance in this regard from the injunctions which were entered in the Petersburg and Richmond Cases; perhaps, they will afford you something to trade on.

At this time, gentlemen, is there anything further for the Court to consider?

Mr. Treese: There is one matter that is consistent with the Court's approach to this case, in view of the delibera-

tion and slowdown at this point for all to review them in depth, I wonder if the discovery might remain open?

Judge Robinson: Certainly, it will remain open. I thought it went without saying, the ready why you didn't have more ample opportunity. I just wanted to accommodate you.

Mr. Treese also made some other point on a more [399(g)] deliberative basis and this case is probably going to be helpful on this question.

Gentlemen, make your presentations, make them full, we've got to have a reasonable opportunity to decide the case and decide it soundly. Nothing else is going to be in the interest of the six hundred thousand citizens in New Orleans if it falls short of that, and certainly, that will be the Court's objective.

There being nothing further, gentlemen, this trial will be adjourned until 10 o'clock October 17.

(Whereupon, the Court adjourned at 5:32 p.m.)

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[400]

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Wednesday, October 17, 1973

Washington, D. C.

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[401] PROCEEDINGS

(The Three-Judge Court convened at 10:05 A.M.)

Deputy Clerk: Civil Action No. 1495-73, The case of Peter H. Beer, et al. versus United States of America, et al.; Mr. Stoner, Mr. Treese, and Mr. Salatich for the Plaintiffs; Mr. Shurtliff and Mr. Friends for the Defendants; Mr. Halpin and Mr. Cotton for the Intervening Defendants.

Judge Robinson: Gentlemen, are you ready to proceed?

Mr. Treese: We are, Your Honor.

Mr. Shurtliff: We are, Your Honor.

Mr. Halpin: Yes, Your Honor.

Judge Robinson: At the outset, there are two matters the Court would like to take up preliminarily; one is this, it's the Court's recollection that there was a colloquy with counsel when we were last here on this case relative to the ordering of transcripts. One day's proceedings last August has been transcribed and that transcript has been made available to the Court. It is the Court's understanding, however, that no order for the transcription of the second day's proceedings has been placed. The result is that the Court is at the moment is without a transcript of the second day's proceedings.

Now are we correct in our understanding that counsel are making arrangements with the reporters to transcribe all proceedings in this trial?

Mr. Treese: That was my understanding as we left, Your Honor, that we had asked for a transcript of all proceedings, [402] and we, like the Court, have only received the first day's proceedings.

Judge Robinson: Well, would counsel get together at the first convenient time among themselves and with the court reporters and make the necessary arrangements.

Mr. Treese: Yes, sir, Your Honor.

Judge Robinson: The second thing, gentlemen, is this, it would be helpful to us if we had a better idea than we now

have as to what your respective estimates of the amount of time your feel will be required in order to complete this trial.

Mr. Stoner, could you give us the prognosis from the Plaintiffs' viewpoint?

Mr. Stoner: Yes, Your Honor, we believe that we will be finished by noon tomorrow. We will have one witness who is coming in from New Orleans. We may offer that person as a witness tomorrow and in that event, his testimony would be taken in the morning with the Court's permission, And we believe that our testimony today can be concluded with the exception of that possible witness.

Judge Robinson: Very well, Mr. Shurtliff, how about the Government?

Mr. Shurtliff: May it please the Court, we have four witnesses; we have deposed three of those witnesses and based on the depositions, and the time it took, I would estimate that the taking of testimony from those four witnesses would take [403] just over a day, possibly a day and a half; that would be examination and cross-examination.

Judge Robinson: In view of the fact that three of the four witnesses have been deposed, did you say?

Mr. Shurtliff: That's correct, Your Honor.

Judge Robinson: Is it possible for counsel to shorten that phase of the trial by stipulation, or otherwise? Is this formal material, Mr. Shurtliff, that possibly on the basis of the stipulation for use by the Court of the depositions in lieu of Ortinez's testimony?

Mr. Shurtliff: If I may, Your Honor, all right.

Judge Robinson: Well, I won't press you for an answer at this moment, but if you yet us know as soon as you could. Are matters of credibility involved, for example, that may affect your decision? If you will let us know at your earliest convenience, it will bt helpful.

Mr. Shurtliff: Yes, Your Honor.

Mr. Treese: May we explore that at the first break, Your Honor?

Judge Robinson: Yes.

Mr. Halpin?

Mr. Halpin: I would anticipate our case would take less than one-half day, it would dtpend, of course, on the evidence that would be put on by the principal Defendants.

Judge Robinson: Very well.

[404] Mr. Stoner, one further question to you, have any of the witnesses you propose to use from now on been deposed?

Mr. Stone: Yes, they have, Your Honor. Several of the Councilmen whom we plan to call have been deposed, yes, sir.

Judge Robinson: Would your next witness be a witness who has been deposed?

Mr. Stoner: Yes, he would be. The next witness we propose to call is from the planning staff of the City Council Planning Staff. He has been deposed, yes he has been.

Judge Robinson: Do you think the suggestion I made moments ago might be a possibility with reference to that and any other witness—that witness and any other witness you may have to present?

Mr. Stoner: It's a possibility. May I confer?

Judge Robinson: Gentlemen, how long would it take you to confer on the whole matter of using all or portions of deposition testimony in lieu of trial testimony?

Mr. Treese: I think we could resolve that in five or ten minutes, Your Honor.

Judge Robinson: Very well. At this time, Marshal, the Court will stand in recess until further ordered.

(Whereupon, the Court recessed at 10:15 A.M.)

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(The Three-Judge Court reconvened at 10:32 A.M.)

Mr. Treese: May it please the Court, during the break all [405] counsel have gathered and we have agreed to introduce all of the depositions that have been taken in

this case as joint exhibits with prospective consecutive numbers. I have asked the Clerk, also, during the break whether the Court has actually received the originals from New Orleans. I would have to actually check that to see that the Court has actually gotten these depositions.

With regard to shortening the trial with regard to stipulating to the contents of these depositions, we can only predict that there will be some witnesses we will now not call as a result of our conference and the testimony to be offered live in Court will probably be greatly shortened as a result of this stipulation. But we do intend to call some live witnesses now. I would predict at this point that the number of live witnesses to be called by the Plaintiffs will be three in number.

Judge Robinson: Very well. Let me ask one question about the stipulation. It is, I take it, that the testimony given by the witnesses as deposed will be submitted to the Court and may be accepted by the Court in lieu of testimony at this trial, is that correct, is that the substance of it, the purport of it?

Mr. Treese: That was our intention, however, there will be, perhaps, some overlap with the live testimony that is presented in open-Court.

Mr. Treese: That was our intention, however, there will be, perhaps, some overlap with the live testimony that is presented in open-Court.

Judge Robinson: I understand that, but the stipulation on [406] the part of counsel goes only to that extent, but it leaves the Court free to accept any any all of the deposition testimony just as though the witnesses have testified personally at trial.

Mr. Treese: That's my understanding.

Judge Robinson: Very well, Mr. Treese. Do other counsel have other comments in this regard?

Mr. Shurtliff: May it please the Court, because of the stipulation, the United States will call only two witnesses live instead of the four as we had previously planned. Consequently, I would think that it might be a half-day or a

little over a half-day for those two witnesses, Your Honor.

Judge Robinson: Very well. Mr. Halpin?

Mr. Halpin: Our witnesses will be called, but we anticipate that their testimony will be a good deal shorter.

Mr. Treese: If it please the Court, I have another matter which I wish to call to the attention of the Court. I received notice from the District of Columbia Court of Appeals of a hearing before them scheduled for this afternoon. I wrote a letter notifying them of the resumption of our trial. I received a letter from the Clerk asking me to advise the Court of the local rule now that a trial in progress will be held in abeyance for any appellate hearing. They are doing this Court the courtesy of scheduling us first this afternoon at 2 o'clock. I would predict that I could be back here within a half hour; [407] it's a very short matter.

Judge Robinson: You are not suggesting that we suspend in view of the fact that you have co-counsel, are you? Would it be necessary for the Court to do that?

Mr. Treese: If we complete the first witness this morning, I would say that co-counsel could certainly carry on without any problem.

Judge Robinson: All right, you let us know before we recess for lunch.

Mr. Treese: Yes, Your Honor.

Judge Waddy: If you had followed the prediction that you made, you have to complete the first witness this morning.

Mr. Treese: I will try to hold to my prediction, Your Honor.

Judge Robinson: All right, gentlemen, you may call your next witness—just one moment.

(The judges conferred privately off the record.)

Judge Robinson: You may call you first witness.

Mr. Stoner: May it please the Court, the Plaintiffs will call as its next witness Mr. John Eckert and Mr. Treese will examine.

Judge Robinson: Very well.

Whereupon,

Jonathan A. Eckert

took the stand, and being duly sworn, was examined and testified [408] as follows:

Direct Examination

By Mr. Treese:

Q. Mr. Eckert, would you state your complete name and present residential address. A. Jonathan Allen Eckert, 4602 Carondelet Street, New Orleans, Louisiana.

Q. What is your occupation, sir? A. I am an administrative analyst to the City Council Research Staff.

Q. When did you begin that job? A. In October of 1971.

Q. Do you hold any degrees from any colleges, universities? A. Bachelors in Business Administration from Loyola University in New Orleans.

Q. Are you pursuing any other education? A. Yes, I am in my third year of law school at Loyola; it's a four-year curriculum.

Q. Taking you back, Mr. Eckert, to the time when you began your employment with the Research Staff of the City of New Orleans Council, what were your functions on the staff at that time? A.Well, I had general assignments, which is to say, ad hoc type of things, general research. I was given the major responsibility insofar as redistricting efforts of the City [409] Council. This took up that is to say a great deal of the time, although there was other work, other things to be done.

Q. All right, now directing your attention to that portion of your duties dealing with the redistricting function of the Council, at the time you joined the staff, was the staff in receipt of the decenial census information it needed to pursue this redistricting? A. I believe the receipt by the City Council of the third-count census tapes, the computer printout, that is which is supplied by both the city demonstration agencies and model cities, coincided when I first started to work. In other words, when I went there, that same day, I believe, we received third-count census tapes.

Q. Who directed you to begin developing plans or concepts for the redistricting of the City of New Orleans? A. James N. Peyzant, my immediate supervisor, and he sent me to do certain tasks with regard to redistricting.

Q. And who on that staff worked on this project? A. Prior to my working on it?

Q. Let's take it from the time when you began, who was working on this project? A. I was, essentially, the only one doing the statistical work on it.

Q. Let's take it from the time when you began, who was working on this project? A. I was, essentially, the only one doing the statistical work on it. Mr. Peyzant, of course, looked over things and had comments to make.

Q. As a result of this direction from Mr. Peyzant, what [410] did you next do with regard to the redistricting of the City of New Orleans? A. Prior to my employment, certain concepts had been developed which were based on the second-count census data. Upon receipt of the third-count census data, we set about compiling ward totals based on the third-count census data which was impractical to do using second-count census tapes.

Q. And when you talk in terms of totals, are you talking in terms of population? A. Yes, sir.

Q. Now with the statistics that you had available at the time you were developing the concepts, were there any other considerations on your part, or on the part of the staff, in the development of the concepts, or plans for redistricting? A. Mr. Salatich had sent us, what we called them, guidelines from the Attorney General's office which deals with Section 5, the Voting Rights Act. Also Mr. Salatich provided the Council's staff and the City Council with a digest of Judge West's opinion in the Louisiana Legislative Reapportionment Case.

In general, we sometime talked to Mr. Salatich about the way things should be done and he would always stress that we shouldn't have unusual district shapes or a star-shaped district, things with a lot of protrusion for no apparent reasons. We talked to him about the possibility of, say, splitting precincts, [411] whether or not it would be feasible, and generally he said it wouldn't be a good idea to do things like that. So, yes, I suppose we had some guidelines with them.

Q. Did you consider racial composition? A. Well, initially, we were working out these concepts. We were doing it on the basis of total population because at working on these things, you don't add up totals and add up whites or blacks; you start with totals and the next step is to determine population by ethnic groups. So initially, we were just working on total population and later on we went on to do blacks.

Q. By saying—by your testimony initially, you were considering only total population, were you trying to achieve a balance within the five councilmanic districts by number? A. Right.

Q. Was that what you were trying to do? A. Right, that is the charter requirement.

Q. All right, can you recall mathematically what that number was, your goal per district? A. About 118,694.

Q. About 118,694? A. Yes.

Q. All right, now after you had developed the mathematical division and you had the guidelines of Mr. Salatich—by the way, that's Mr. Ernest Salatich? [412] A. Yes, Assistant City Attorney.

Q. Yes, and you had considered the compactness and so forth? A. Yes.

Q. Did you have available any registration statistics within the City of New Orleans? A. There were voter registration statistics in the office. Initially, again, we didn't use them; we were more concerned with total population.

Q. Now in this first evolution of preparing conceptual plans, or concepts, or whatever you want to call them, how

many distinct concepts grew out of that? A. Approximately eight or nine had been prepared based on second-count data. There were revisions of the second-count data so that adjustments could be made to precinct boundaries. So essentially, I believe we were still working with around eight concepts.

Q. Now what did you do with these eight concepts, what did you, personally, do with these eight plans? Did you deliver them to somebody? A. Well, the eight concepts had been disseminated to the Council, I believe, by Mr. Peyzant prior to my being there. However, when we made the modifications to correspond with precinct boundaries, some substantial revisions were sent, I believe, to the councilmen.

[413] Q. Did you feel compelled to adhere to precinct boundaries? A. Yes.

Q. And for what reason? A. Well, again, Mr. Salatich didn't think it would be a good idea. You have other political subdivisions in the city, especially State Representatives' districts, and State districts which in large part are based on precincts. So you might run into a situation say, where by changing a precinct boundary and that, for example, State Representative's district is defined by a specific precinct, you might have a situation where the boundaries change and some legal question about whether there would be two precincts, whether there would be one, etc., plus it would have caused a lot of difficulty for the Registrar of Voters.

Q. Did you feel any compulsion to adhere to existing ward boundaries? A. We had read the 1960, I believe, Councilmanic Reapportionment Case, Schlateau versus The City of New Orleans and some of the language in there had suggested that ward boundaries were to be recognized; the ward boundaries frequently correspond to major streets, Canal Street, Napoleon Avenue, and things like that. There were historical trends there. So, yes, we did follow ward boundaries whenever possible.

[414] Q. Is there any voter identification by ward in the City of New Orleans? Did the voters or citizens of New Orleans think of themselves as being within a certain ward? A. Well, it would vary . . .

Mr. Halpin: If I may, I would like to object to that question. I don't think the witness is competent to indicate what his opinion of the voters of the City of New Orleans felt.

Judge Robinson: You want to reframe your question, Mr. Treese?

Mr. Treese: Very well.

By Mr. Treese:

Q. In the political or election process in the City of New Orleans, what part do wards play? A. Insofar as the Registrar of Voters Office is concerned the wards are the constitutional unit by which their election processes are held and subdivided into precincts.

Q. Who establishes ward boundaries? A. They are established in the Constitutional Home Rule Charter of 1912 or—13.

Q. Is that the Constitution of the State of Louisiana? A. Yes, sir.

Q. All right. Now Mr. Eckert, after you had developed the eight or nine concepts and delivered them to Mr. Pezant who then in turn, turned them over to city councilmen, were you called in on any other development of the redistricting plan of [415] City of New Orleans? A. There was a luncheon meeting held wherein the Mayor of the City, Mayor Landrieu, had advocated an expansion of the Council. So subsequent to that luncheon meeting, Councilman Sapir asked that we draft an ordinance to call a Charter amendment election to expand the Council.

Q. Did you take part in the development of the plan for that ordinance? A. Well, it merely called—the ordinance, itself, merely called an election to expand the Council by two district Councilmen.

Q. Are you aware of the results of that ordinance? A. Well a number of things would happen. You mean the final outcome?

Q. Yes. A. Yes. Well, it's difficult to describe. Originally, the ordinance that had been drafted was to expand the Council to nine members; it was passed subsequent to —it was called in August, I believe, the Charter election. However, court injunction rendered the ordinance without effect and subsequently that ordinance was amended to hold the election in November. However, that was vetoed by the Mayor. So that was the final outcome of that ordinance, but one virtually identical to it was later introduced in December of '72.

Q. Very well. Now are you familiar with the two plans [416] that we have before the Court in this particular case. We have been referring to Plan 1 and Plan 2 for the redistricting of the City of New Orleans? A. Yes.

Q. Now did you play a part, or did you participate in the development of the so-called Plan 1? A. We did statistical work on it. I wouldn't say any precision had been put into that.

Mr. Treese: If the Court will indulge me for a minute, please.

Judge Robinson: Very well.

(Mr. Treese and Mr. Stoner conferred privately off the record.)

By Mr. Treese:

Q. Mr. Eckert, can you hear me (positioning himself near the maps displayed on the board in the courtroom)? A. Yes.

Q. Can you see these exhibits that are portrayed on this blackboard? A. Yes.

Q. The one on the left is Plaintiffs' Exhibit No. 11, can you identify that? A. Those are the Councilmanic districts that are presently constituted.

Q. And the one on the right, can you identify that [417] exhibit, that's designated Plaintiffs' Exhibit No. 12 (in-

dicating)? A. That was the ordinance adopted by the Council in, I believe, March of 1972 which was submitted to the Justice Department and later overruled by the Justice Department.

Q. That is what we call what we have referred to as Plan 1? A. Yes, I think you have referred to it as Plan 1.

Q. All right, now, did you participate in the development of that Plan? A. Districts D and E are similar to concepts we have prepared; however, again, we just did, I believe, statistical work on Districts A, B, and C.

Q. Would you describe further, when you say, "did statistical work", what do you mean? A. We performed calculations to determine whether or not they were proximating 118,694.

Q. Did you do any statistical work with regard to racial composition of the populations of the various districts? A. Well, we added total population and added up the black population.

Q. Did you have available the registration statistics, also, in addition to population statistics? A. Yes, we did.

Q. In the development of the concepts, or plans, were [418] these factors in your mind, the population and the registration statistics with regard to race? A. In the development of the plans?

Q. Yes. A. Again, primarily, we were concerned with total population. You couldn't help but look to the black population to see if other general guidelines were being met on it, specifically, anti-dilution and registration, also, was important because in the Attorney General's guidelines one has to be careful not to dilute minority voting strength.

Q. Did you observe any other considerations, such as natural boundaries, in the development of these concepts or plans? A. You are speaking of Plan 1?

Q. Yes. A. Well, as I said, we essentially performed, I believe, statistical work on what is called the Plan 1.

Judge Waddy: Mr. Halpin, are you understanding the witness sufficiently?

Mr. Halpin: Yes, sir.

Judge Waddy: Very well.

By Mr. Treese:

Q. All right, now after the so-called first plan passed the City Council and went to the Justice Department and was turned down by the Attorney General, was the staff—the [419] Research Staff of the City Council then directed to come up with some alternative plans for the redistricting of the City of New Orleans? A. Yes, in November of 1972, Councilman Moreau asked the staff to prepare redistricting plans.

Q. And did you? A. Yes, we did.

Q. And did you follow the same considerations that you have previously discussed here this morning with regard to the development of the first plan?

Mr. Shurtliff: Objection, the witness has stated that all he did in conjunction with the first plan was performed the statistical work.

Judge Robinson: The objection will be overruled. Would you clarify that? He may have done so even with reference to his statistical work.

By Mr. Treese:

Q. Did you take—in developing the second plan, did you take into consideration the same guidelines and approaches that you followed in developing the first plan? A. Well, I believe, in developing the second plan, we were more sensitive to anti-dilution factors. I believe we also attempted essentially to follow ward lines, natural boundaries, precinct boundaries.

Judge Robinson: Would you clear up, at least, for me at [420] this point, Mr. Treese, the question whether the witness in the operation in which he engaged, did anything with reference to the second plan that he did or did not do with reference to the first plan? In other words, was his activity entirely statistical with reference to the second plan as it was with reference to the first plan?

By Mr. Treese:

Q. Did you understand the Court's inquiry? A. Yes.

Judge Robinson: (Addressing witness) You did all this statistical work with reference to Plan 1?

Witness: Not alone, but yes, we did these statistical works.

Judge Robinson: Well, it was principally statistical work on Plan 1, as I understood your testimony?

Witness: Yes.

Judge Robinson: Was there any difference with reference to Plan 2?

Witness: Well, this was given to us by Councilman Moreau.

Judge Robinson: Yes, I understand that, and you were pursuing guidelines with reference to Plan 2 as you had previously with reference to Plan 1, but . . .

Witness: Which guidelines?

Judge Robinson: I beg your pardon?

Witness: Which guidelines did we continue under?

[421] Judge Robinson: No, no. I understand you to say that you were following guidelines of some sort with references to 2, as well as with reference to 1, is that correct—those given you by Councilman Moreau?

Witness: Yes, right.

Judge Robinson: Right, but what were you called on to do, was it principally statistical work, was it entirely statistical work, did it embrace other activities, or what?

Witness: Well, I believe, Councilman Moreau was asking for something in the vein of recommendation, for something that would be valid rather than simply finding out how many people were in his precinct.

Judge Robinson: What were you called upon to do in connection with Plan 1?

Witness: To design plans that would be feasible to meet the requirements of the law.

Judge Robinson: And that call would have involved activities of what general character?

Witness: What general character would that have involved?

Judge Robinson: Yes.

Witness: It would have involved examining guidelines, closely scrutinizing the area to see whether or not those guidelines were being met.

Judge Waddy: How does that differ from what you were doing with respect to the first plan?

[422] Witness: Well, in a staff capacity—you can write good laws, bad laws, constitutional laws, unconstitutional laws. If you are making staff recommendations, you make something that you think is good, legal, and constitutional. You understand what I mean by "in staff capacity?"

Judge Waddy: I still don't understand as to what different criteria, if any, you were using in the second instance from that which you used in the first instance.

Witness: In designing the first plan, we were—all right, we were merely performing some statistical data and provided that; whereas in the second plan, we were, more or less, designing something that we would offer as a staff recomemndation to Mr. Moreau.

Judge Waddy: All right, now tell us what criteria you used for the second plan?

Witness: All right, ward boundaries, we adhered to them whenever possible, natural boundaries, the River, major streets, canals, sensitivity to not diluting the strength of voting groups whenever possible, adhering to precinct boundaries, keeping the districts with a reasonable shape.

Judge Corcoran: All those factors have been considered in connection with Plan 1, haven't they?

Witness: Well, as I said, we had worked on, possibly, eight concepts. Now insofar as those concepts are concerned, I think those guidelines were utilized.

[423] Mr. Treese: May I raise another consideration?

Judge Robinson: May I ask a question before you do?

Mr. Treese: I'm sorry.

Judge Robinson: Mr. Eckert, I take it that when you got around to giving consideration to what is referred to as

Plan 2, you had all of your statistical raw material already on hand?

Witness: Yes.

Judge Robinson: Which was as a consequence of the work you did on Plan 1, am I correct in that regard?

Witness: Yes, the consequence of work done on Plan 1, and further work after that.

Judge Robinson: You have described your activity with reference to Plan 1 as largely, or principally, statistical. I gather from that, that your activities with reference to Plan 2 was different?

Witness: Well, I perceived it as being somewhat different, yes.

Judge Robinson: All right, now would you tell me the difference?

Witness: The difference?

Judge Robinson: Yes.

Witness: Okay. When the first plan was, as you see it on the display board, was worked out, it was worked out actually by District Councilmen. Now as Plan 2 was worked out, the District Councilmen didn't see it. So essentially, that is what I'm [424] saying.

Judge Robinson: If I understand you correctly, what you are saying is that Plan 2 was something that you made more of a contribution to than Plan 1?

Witness: Yes, I would say that.

Judge Robinson: I think I have it, Mr. Treese.

By Mr. Treese::

Q. As an example of that line of inquiry, Mr. Eckert, were you directed to treat the so-called Algiers section in a certain way in Plan 1 development by the Councilmen? A. Well, in the development of the eight concepts for the Councilmen, we were aware that Algiers needed a bridge and had its transportation problems and it was combined to form District A with Uptown New Orleans which is opposed to a bridge. Generally, I believe, both black and white who live in the uptown sections are opposed to a bridge in

their neighborhood. Needless to say, this produced some division for whoever would represent Uptown New Orleans and Algiers.

Q. Perhaps I can shorten this. Were you directed to split Algiers in the development of Plan 1? A. In the development of Plan 1?

Q. Yes. A. In the concepts involving Plan 1?

Q. Yes, yes. A. Well, when I came to work for the Council, some of the [425] concepts which had existed had split Algiers.

Q. How many proposals did you submit to Councilman Moreau in connection with the second plan? A. Four.

Q. Four? A. Yes, sir.

Q. Mr. Eckert, do you recognize the right hand map of the City of New Orleans (indicating), which is identified as Plaintiffs' Exhibit No. 3 on the board? A. Yes.

Q. Can you identify that for the Court? A. That is what is called Plan 2, I believe.

Q. That's the plan that is the subject of this law suit, right? A. Yes.

Q. All right, and so it was that plan and three others that the staff submitted to Councilman Moreau? A. Yes, sir.

Q. Now was the NAACP plan one of the four plans submitted to Councilman Moreau? A. Yes, sir.

Q. Did any of the four plans divide Algiers? A. No, sir.

Q. Were you directed not to divide Algiers? A. Well, I didn't think it was a good idea. No one said [426] not to, I think it was the general consensus by everyone that it would be a bad idea.

Q. Did you attend any of the public hearings, Mr. Eckert? A. Yes, sir.

Q. Surrounding the two plans? A. Yes, yes sir.

Q. Let's go to the first plan. How many hearings do you recall surrounding the first plan, public hearings? A. Well, there were two where there were individuals who came forth; there was a third, actually, because on final passage, citizens were permitted to speak with regard to the ordinance on final passage, but I really don't recall wheth-

er any one spoke or not on the ordinance on final passage.

Q. With regard to the second plan, do you recall attending a hearing? A. Yes, sir.

Q. And were people given the opportunity to speak at that? A. Yes, sir.

Q. All right, do you recall any one being denied the right to speak at those hearings? A. No, sir.

Q. Now did the staff on which you participated receive any plans from any special interest groups, or let's say any groups outside of the employment of the City of New Orleans for consideration? [427] A. Well, plans were presented to the City Council, that's the normal procedure; if they are presented to the City Council, we naturally get them.

Q. Were some received by the staff from the City Council? A. Well, we made it our business to get them, yes.

Q. How many were received? A. A plan over the entire span of redistricting?

Q. Right. A. Well, early in the game, the NAACP submitted a plan. You are referring to five districts?

Q. Yes, I am talking only now of five councilmanic districts. A. And then in April '72, the local Republican party submitted a plan. Those are the only plans that I am familiar with.

Q. Did you analyze those two plans from a statistical standpoint? A. Yes, sir, we went over them.

Q. And did you find that they were statistically balanced in conformity with the law? A. Yes, sir.

Q All right. Did you find that they met the guidelines with regard to compactness? A. I believe (pausing in thought)—yes, with regard to the NAACP plan, with regard to the Republican plan, I had some [428] questions about it in my own mind.

Q. In the development of all of the plans that you worked on since you have been employed by the staff, have you ever developed a plan which has east-west configurations for councilmanic districts as opposed to north-south configurations? A. Yes.

Q. And how many such plans have you developed? A. I would say two that could be called plans and that we were satisfied with them.

Q. Is it possible to develop such a plan and still in some way adhere to the traditional boundaries of the districts in the City of New Orleans in an east-west plan? A. Well, obviously, if you are going east and west, you can cut through some of the ward lines, so in doing so, you can cut through some of the councilmanic districts since '54, going north-south.

Q. In the development of your plan, were you ever ordered not to place two or more incumbent councilmen in any single district? A. No, sir.

Mr. Treese: Very well, would the Court indulge me for a moment?

Judge Robinson: Very well.

(Mr. Treese conferred privately off the record with Mr. Stoner.)

[429] Mr. Treese: May it please the Court, the balance of this witness' testimony can be found in the deposition.

Judge Robinson: Very well, Mr. Treese.

Mr. Shurtliff.

Cross Examination

By Mr. Shurtliff:

Q. Mr. Eckert, in drawing the second plan, did you consider as a factor whether or not to place two or more incumbent councilmen in the same district? A. Yes.

Q. How was that a factor and in what degree was that a factor? A. Well, the question went to whether or not the City Council would pass a plan; essentially, that is, I believe, the reason.

Q. And you considered that question, sir? A. Well, we provided alternatives, I believe.

Q. Alternatives that did not place two or more incumbent councilmen in the same district? A. Yes.

Q. And does Plan 2 place two or more incumbent councilmen in the same district? A. No, sir.

Q. You stated you submitted to Councilman Moreau in response to his request four plans? [430] A. Yes.

Q. Did any of the other three plans submitted to Councilman Moreau place two or more incumbent councilmen in the same district? A. Yes, sir.

Q. How many of those plans did that, do you recall, sir? A. Out of four, two placed councilmen in the same district.

Q. Did you recommend one of the four plans to Councilman Moreau more strongly than you did the others, or how did you handle your response to Councilman Moreau's request for the redrafting of the plants? A. We gave him the four maps and the data, and essentially, that was it.

Q. Did you give him statistical data, as well as the maps? A. Yes.

Q. What kind of statistical data did you give him? A. Population totals and black.

Q. Did you give registration statistics? A. No, sir.

Q. You testified that you at one point did develop some registration statistics. When did you first start developing registration statistics in your work on the whole in the redistricting problem? [431] A. Well, prior to the adoption of what is called Plan 1, we were starting to develop some voter registration figures.

Q. Why did you do that, sir? A. Well, for one thing, it was required in the Voters Rights Act; in order words, this was a consideration.

Q. Were there any other reasons you developed those statistics? A. Well, I believe, Mr. Pezant asked me to, you know, run through some of those.

Q. Did he ask you to run through registration statistics for all of the concepts you had developed? A. I don't believe he ever asked us to do that—for all the concepts that have been developed?

Q. Yes, sir. A. No, I can't recall him ever saying that I do it for every concept.

Q. What did he ask you to do? A. In certain cases, you know, we would just see what various options did in the way of voter registration.

Q. In what cases? A. Well, there wasn't anything really arbitrary in nature to it, I would say, essentially, for District E, we were working with two options, to see what one option did and what the other option did.

Q. Did any councilman ever ask you to prepare registration [432] statistics for him? A. Yes, Councilman Lambert did.

Q. And when did he do that? A. At a luncheon meeting where the Mayor advocated an expansion of the Council.

Q. And this was prior to the adoption of the first plan? A. Yes.

Q. What did Councilman Lambert ask you to do? A. He just wanted the makeup on his district under the various options.

Q. What do you mean by "makeup?" A. The racial composition, population.

Q. Registration? A. Yes, I think we gave him registration.

Q. Did he indicate why he wanted that information? A. Well, he said that he needed it to make an intelligent decision.

Q. You stated that you performed statistical work in the development of Plan 1? A. Yes.

Q. And that the plan was, in fact, developed by the District Councilmen, is that correct? A. Yes, essentially, Districts A, B, & C were worked out by Councilmen from A, B, & C.

Q. How do you know that that was the case? [433] A. Mr. Gregory Smith of the staff and I were in the room and were working the calculator.

Q. And what room was that, sir? A. Well, the calculator was in the front room of our office which is divided into two rooms and the Councilmen were in the back room.

Q. And when did this take place? A. I believe it was a week—a week and a day prior to the adoption of Plan 1.

Q. Who attended that meeting from the City Council? A. The five District Councilmen.

Q. How long did the meeting last? A. Two or three hours.

Q. And was the result of that meeting Plan 1? A. Yes, sir.

Q. How did—would you describe the meeting for us as to how they went about developing a plan? A. Well, it took from the starting point with the districts that they had and determined who would have to gain population, who would have to lose population, and from that point, decided where to take that population from and transfer it to.

Q. And what function did you, sir, you and Mr. Smith, have? A. We indicated whether or not the population in the areas under consideration would be sufficient.

[434] Q. Did you indicate registration figures? A. Yes, I believe we worked out some registration figures.

Q. As well as population figures? A. Yes, sir. (Pausing in thought)—Let's see, I'm trying to think. We did work out some registration figures. I know we didn't do all of the registration figures.

Q. Did the Councilmen have before them maps of the City? A. Yes, sir.

Q. What maps did they have, if you recall? A. There was a city map, a voters aspersion map.

Q. A registration map by race? A. Yes, sir.

Q. This map has previously been marked for identification . . .

Judge Robinson: Just a moment, (addressing witness) can you see the map?

Witness: Yes, sir.

By Mr. Shurtliff:

Q. . . . as Defendant's Exhibit 1. Is this the map (indicating) that they had before them at that time, sir? A. Yes, sir, I believe that is the map.

Q. What use did they make of that map, do you know, sir? A. They referred to it during the discussion.

Q. Did councilmen from districts that shared a common [435] boundary, did they in particular discuss where that boundary should go, or did all councilmen consider that? A. Generally, that type of discussion would have been between the adjacent councilmen.

Q. You stated that in regard to the second plan, that you paid more attention to anti-dilution factors? A. Yes, I believe so.

Q. What do you mean by that, sir? A. Essentially, where there is a large grouping of voters, minority groups, I was of the opinion that one should not go out of one's way to dilute their voting strength. Translated, what that means is that the large black voter concentration in District B area, District B had to gain population, so essentially, you had three ways to go about it. You could go to Algiers, but that wouldn't have been feasible because Algiers had the bridge down there and if you went over into the fourteenth ward to increase population, you would be adding, essentially, white voters which had the effect of diluting the District B voting strength; or third, you could go to the second ward which would have slightly increased the black voting strength in District B. So given that option, we decided that the NAACP district was quite compact; it went into—it did not dilute black votes in District B, and thirdly, it didn't overdo it; in other words, it didn't concentrate a district with 90 per cent black which, of course, had the effect of lessening black voter [436] strength in other districts.

Q. Well, did you set out to insure that there would be no 90 per cent black district? A. Well, I believe it's the Louisiana Legislature that originally designed Dorothy Mae Taylor's district, which would have been 99 per cent black and the court specifically said that that was just an attempt to dilute black voting, taking as many blacks as possible into one district, which, certainly, we were of the opinion that it created a district 90 per cent black.

Q. It was your judgment that 90 per cent black district would be diluted in the sense that it would concentrate too many blacks and adversely affect their strength in other districts? A. Precisely.

Q. How about 80 per cent? A. Well, we really didn't have to worry about that question of what the percentage is, the NAACP had suggested this and we took them as being spokesmen for the black community and we decided that if, you know, 53, or 54 per cent is sufficient and minimized that.

Q. Sufficient for what? A. For creating a district that did not dilute black voting strength.

Q. You stated that at one point you did develop some plans that ran generally east or west as opposed to north-south? A. Yes, sir.

[437] Q. And did they meet the standards of the population equality? A. Yes, sir.

Q. Did they meet or not meet other standards or considerations that you considered important, and if so, would you tell us the factors that you felt they met or did not meet? A. The plans that we drew up?

Q. That went east to west? A. That went east to west? Well, of course they didn't adhere to ward boundaries. When you are drawing east-west plans to you to be very careful, again, you come into Algiers and—in other words, you don't want—in my opinion, you don't want Algiers uptown. So if you are going to go east-west, you can run into a situation where you have some polarization between Algiers and another part of the city.

Q. So you want Algiers to be with some other portion of the city with whom its people are compatible, is that what you are stating? A. Well, when I say it should fit in, for example, if you drew some sort of east-west plan ended up placing, say, Algiers together with, say, the lower seventh ward area, you would have two areas of the city which in composition were virtually opposite.

Q. Opposite in what respect, sir? A. Well, in that they had no historical connection; they [438] had no socio-economic connection, no geographic connection.

Q. How did yo uknow that you should consider these factors in dealing with the placement of Algiers in a redistricting plan that you were drafting? A. Well, I think, insofar as the aforementioned things, such as ward boundaries, historical boundaries, and natural boundaries, that Mr. Salatich had provided, the rest, I think, is, more or less, an assumption.

Q. Were you ever told by Council Moreau, or any other city councilman not to split Algiers? A. I think—I recall hearing Councilman Moreau saying it was bad to split Algiers, it's bad (repeating) it's bad to split Algiers, so in the second group of plans, we totally avoided that.

Q. In the first plan, Algiers was split into three portions, is that not correct, sir? A. Yes, sir.

Q. In the second plan there, they share a councilman with just one other section of the city, is that correct? A. Yes, sir, Algiers is incorporated in districts.

Q. Which district is it in? A. District C.

Q. And am I correct in understanding that in the second plan, District C runs from the lake to the Blackman Parish Line? A. Yes, sir.

[439] Q. Do you have any idea of how far that would be in miles? A. No, sir, I don't.

Q. Do those persons share common socio-economic backgrounds? A. I think taken as a whole many parts of it is similar (repeating) many parts are similar.

Q. In your judgment, District C in the second plan meets the guidelines that you were required to follow, such as compactness, population equality, and so forth? A. Yes, I think it is a reasonable district.

Mr. Shurtliff: I have no further questions, Your Honor.

Judge Robinson: Very well. Mr. Halpin.

Supreme Court, U. S.
FILED
DEC 16 1974
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APPENDIX
Volume II

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

v.

UNITED STATES OF AMERICA
and
WILLIAM B. SAXBE, Attorney General of the United States, Individually and in His Official Capacity,
and
JOHNNY JACKSON, JR., ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

DOCKETED JUNE 13, 1974
PROBABLE JURISDICTION NOTED OCTOBER 15, 1974

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[NOTE: The Opinion of the United States District Court for the District of Columbia is included as Appendix A; the Judgment of that Court as Appendix B; and the Notice of Appeal to this Court as Appendix C in the Jurisdictional Statement filed herein.]

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APPENDIX

Volume II

Jonathan A. Eckert (continued)

Cross Examination

By Mr. Halpin:

Q. Mr. Eckert, you stated, is it correct, that you were familiar with the black population and voter registration concentrations within the City of New Orleans prior to developing Plan 2? A. Yes.

Q. All right. Were you familiar with the location of the residences of the seven councilmen prior to developing Plan 2? A. Yes, sir.

Q. And you also said that you took into consideration placing each of these, the five district councilmen, in separate [440] districts in drawing the plans? A. Yes, sir.

Q. And that is because you assumed that the councilmen would not favor a plan in which they were opposed by another incumbent councilman, is that correct? A. Well, that taken together with the fact that one of the other plans we presented was the NAACP plan and that had been previously presented to the Council by the NAACP, so, yes . . .

Q. And rejected by the Council, is that what you are saying? A. Yes, essentially.

Q. And is it your assumption that the reason the incumbent councilmen wish to be in different districts was that as politicians, they liked to be re-elected? A. Yes, I guess that's possible, I'm sure.

Q. It is true, is it not, that all of the present councilmen are white? A. Yes, sir.

Q. In order to create a plan, is it—strike that. It is true that most of the councilmen, with the exception of Mr. Sapir, live generally near the Lake in New Orleans, is that correct? A. Yes, sir.

Q. Is it not true that in order to divide the City of [441] New Orleans into five districts in which each of these councilmen reside in a different district, that for practical purposes, it is necessary to draw these districts from River to Lake? A. Yes, sir.

Q. Is it not also true, given your knowledge about the black population concentration in the city, that the inevitable effect of doing this is to split up and dilute these large concentrations of black voting strength? A. Could you rephrase that question, I didn't catch it.

Judge Robinson: Do you want the Reporter to read it back?

Mr. Halpin: Please.

(Whereupon the Reporter read back the pending question.)

Witness: Diluted, vis-a-vis what?

By Mr. Halpin:

Q. Using your own definition earlier of dilution, if you will answer the question? A. Okay. Well, in terms of what existed—in other words, you see, there isn't the same option involved. I was looking at it in the sense of—all right—in shaping the reapportionment plan to go to census, I used, for example, District B. You have given a factor which is the existing district. All right, so therefore, in pursuing the change to meet the City Charter requirements as far as equality of popuulation, you have certain options where you can go to [442] increase the population. And in that sense, I think, it is clear cut. But to say that the inevitable result of going River-to-Lake, that black voting strength will be diluted, well, if you have a preponderance of blacks in one part and a preponderance of whites in one part, well obviously, the two would tend to cast lots that would be a dilution of a sort. But when I am think of dilution, I am thinking in terms of systematically adjusting the population so as to weaken the existing voting strength of the existing districts.

Q. Are you saying that your definition of dilution implies an intention, when you say, systematic an intention to discriminate against black voters? A. Well, no, I wouldn't think it would be necessarily an intention. I think the point I was trying to make was you have to have a given and I would take the given factor to be the existing district.

Q. All right. If you consider the given the factor the concentration of black population within the city and black voter registration which is reflected in various maps and exhibits, is it not true that when you draw districts from River-to-Lake, the inevitable result is to have districts in which blacks are generally in the minority, or at the most in a bare majority? A. Well, yes, I believe it is fair to say that.

Q. That's obvious, isn't it from the demographic features of New Orleans? [443] A. Yes, in talking in terms of concentration.

Judge Robinson: I would like to ask the witness a question. When you referred to majority and minority in your last answer, were you making a reference to total population within the district, or to voter registration within the district?

Witness: Well, I think, we are . . .

Judge Robinson: Or both?

Witness: I was thinking in terms of voter registration.

By Mr. Halpin:

Q. You also indicated that if one was to present a plan to the Council which they would seriously consider, and possibly pass, that it should to as great an extent as possible place incumbent councilmen in different districts, is that correct? A. Well, Councilman Moreau said not to worry about whether or not two or more councilmen were in the same districts, so . . .

Q. Yes, but you stated a moment ago, didn't you, that you assumed that you should put—if you are going to have the Council pass a plan, you should have different councilmen in different districts, is that correct? A. Well, I think it certainly was an alternative for the councilmen in case the assumption that they wouldn't want to run against each other is correct.

Q. And would you consider it that any party or parties presenting plans to the Council might also be very aware

of this [444] political factor? A. Yes, sir, I would think so.

Q. And don't you think that the NAACP plan may have well been a compromise which was the closest think that black people could do to have their representation without putting too many councilmen in one district? A. I don't know who the compromise was with and I really don't know the intent of the NAACP Plan.

Q. But you did state that you used the NAACP Plan as your standard in terms of—Well, the NAACP Plan had districts which were 53-54 per cent blacks and you had considered those not to be dilutions and used that as your standard for dilution in developing Plan 2? A. Well, my consideration was that the NAACP at that point was the only citizens organization which had put forth something and in my mind, I regard the NAACP as the spokesman for the black community, and therefore, when we are dealing with substantial black areas of the city, it seemed to make sense to follow them as a guide as far as that district went.

Q. It is true, is it not, that under the NAACP Plan there were several black districts with a majority black voter registration, whereas in Plan 2, there was only one. A. No, sir, it is my understanding that the NAACP Plan in District B had black voting majority, although District B, C & E had population majority.

[445] Q. And however, the voting percentages of blacks within some of the districts of the NAACP Plan was generally higher than the voting percentage of whites in other districts, besides District B, is that correct? A. I believe the black voting percentage in District C was higher and District E was higher.

Q. When you said that you used 53 or 54 per cent as your rough guidelines for dilution, or non-dilution, were you talking about voter registration or population?

Judge Robinson: Just a moment.

Mr. Treese: May it please the Court, that is not my memory that this witness said that.

Judge Robinson: Well, let's clear up the question as to what the witness did say.

Mr. Halpin: All right—I can rephrase the question.

Judge Robinson: All right.

By Mr. Halpin:

Q. On direct testimony, you referred to 53 or 54 per cent in referring to the NAACP Plan and in general testimony about dilution, were you talking about voter registration or population at that time? A. Insofar as the anti-dilution?

Q. Yes. A. Talking about voter registration.

Q. Have you lived in New Orleans all your life, Mr. [446] Eckert? A. I was born here. I moved to an area in Louisiana when I was six years old. I came back for college when I was 18 and I have been there since then.

Q. Are you aware that in the City of New Orleans there was a long history of preventing blacks from registering to vote on account of their race?

Mr. Treese: May it please the Court, I think this far exceeds the direct testimony of this witness; it's outside the scope of the direct testimony and I object to it.

Judge Robinson: Mr. Halpin.

Mr. Halpin: If I may respond, the witness indicated that he considered criterions of dilutions, or ant-dilution factors. We would submit that when one looks at dilution of black voting strength, one must look not only to the demographic factors, but also political realities, the debilitating effect of past discrimination upon existing voting patterns in black political organizations, and so forth and so on, and I am attempting to elicit from the witness testimony that would indicate that he did not consider these sorts of factors in avoiding the racial discrimination that he . . .

Judge Robinson: Maybe, I don't recall your question. I thought your question inquired of the witness as to his awareness of something, not what he considered.

Mr. Halpin: Yes, sir. Well then, the next question would [447] be whether he considered what he was aware of.

Judge Robinson: Did you want to add something, Mr. Treese?

Mr. Treese: No, Your Honor, I will stand on my previous objection.

Judge Robinson: The objection will be overruled. Now let's restate the question for the benefit of the witness so he will know exactly what he is called upon to answer.

By Mr. Halpin:

Q. All right, are you aware that there has been a long history in the City of New Orleans of preventing black people from registering and voting on account of their race? A. Well, I have never studied the matter historically. Of course, one hears all kinds of things. Since I have been working in the City Government, I haven't seen any overt activities of that type and as to how the registrar of voters or voter registration generally was required prior to that time. I can only tell you that you read things in the papers, such as Avery Alexander was thrown out of City Hall in the '60's. I was not aware at the time it was going on that it was going on and I don't know the extent. I don't know how persuasive the atmosphere was. I am really not qualified to answer that.

Q. All right, are you generally aware that the City of New Orleans has a long history of general racial discrimination. A. Well, it's a southern city and I am aware of the segregated schools, segregated eating places . . .

[448] Mr. Treese: May it please the Court, although the witness has answered, I would object to the question and answer on the grounds that it has absolutely no relevance to this case.

Judge Robinson: Well, the Court has ruled that it is relevant when it overruled your objection.

By Mr. Halpin:

Q. Did you consider in any fashion the long history of racial discrimination in the City of New Orleans in de-

vising Plan 2? A. Probably to the extent that I was concerned, perhaps, in my own mind about a polarization. My own perception of the city is that it is becoming more liberal, possibly due to the increase of black voting strength, possibly due to other factors, more liberal reaction on the part of the white community. These are only my assumptions, so therefore, that would be the only extent that I considered that fact.

Judge Waddy: Did that personal attitude of yours reflect itself in the plan?

Witness: I wouldn't say it was a personal attitude reflecting itself in the plan.

Judge Waddy: I understood you to say that you were considering your personal feelings?

Witness: Yes, I mean, in answer to that question, I didn't sit down and say, "What are my feelings to redistricting of the city?"

[449] Judge Waddy: Now my next question is whether or not that feeling you had reflected itself in the product that you produced?

Witness: Well, in the product that was produced was two districts, just like the NAACP and two districts . . .

Judge Waddy: I don't believe you've answered my question.

Witness: I am trying to. What I am saying is the plan, I don't know if it is a product of any feelings that I have.

Judge Waddy: All right.

By Mr. Halpin:

Q. When you were developing Plan 2, you were aware, were you not, that the Department of Justice had objected to an aborted Plan 1 as being racially discriminatory in purpose or effect? A. When we developed the four plans for Councilman Moreau, the Justice Department had overruled the first plan.

Q. Sir, at the time you were developing Plan 2, you did not know that Plan 1 had—Plan 1 had not yet been objected to, is that your testimony? A. Yes, sir.

Q. So you didn't—is it your testimony that, therefore, you didn't take into consideration the factors stated by the Justice Department in objecting to Plan 1 when you were developing Plan 2? A. Well, on rejection, the first objection, I think, was [450] rather general, so insofar as what the Justice Department said in their first letter of rejection, it wasn't available, but—and we didn't use it. However, what I am saying is when the thing was—when the letter of rejection was received by the City, we looked it over and just comparing what was said to the product of Plan 2, we were of the opinion that it conformed.

Q. But essentially, Plan 2 was developed before you studied the objections to Plan 1 by the Department of Justice, is that correct? A. Yes.

Q. But in your opinion, Plan 2 doesn't suffer from the same sort of racially discriminatory features that Plan 1 did, is that correct? A. No.

Judge Robinson: After you received the decision of the Department of Justice on Plan 1, were any changes made in what became Plan 2?

Witness: By the staff?

Judge Robinson: By any one.

Witness: Well . . .

Judge Robinson: Well, first, by the staff, did you recommend any changes?

Witness: No, that ordinance had been introduced prior to the rejection.

Judge Robinson: Were any changes made of which you are [451] aware in Plan 2 after receipt of the Justice Department's decision on them or in consequence of that decision?

Witness: Not that I can say in consequence of.

Judge Robinson: Very well.

By Mr. Halpin.

Q. Isn't it true that in developing Plan 2 as opposed to Plan 1, that really, your primary concern was the splitting or non-splitting of Algiers and that was really what you were concerned about in developing that second plan.

A. Well, besides splitting Algiers, I believe Plan 1 did sort of dilute District B's black voting strength in that it went into, first, Algiers, and secondly, the fourteenth ward.

Q. Were you concerned about that when you were developing Plan 2 prior to receipt of the Justice Department's objection letter to Plan 1? A. Yes, we thought it was a weakness of Plan 1.

Mr. Halpin: No further questions.

Judge Robinson: Any redirect examination?

Mr. Treese: One question.

Redirect Examination

By Mr. Treese:

Q. Mr. Eckert . . .? Yes, sir.

Q. . . . in your opinion, comparing the voting groups and statistics that you have studied with regard to the present [452] districting plan of the City of New Orleans, which is Plaintiffs' Exhibit 11, in comparing those statistics with these statistics you know as pertaining to the second plan, Plaintiffs' Exhibit No. 3, in your opinion, have the voting rights of any minority groups of the City of New Orleans been diluted as a result of the second plan?

Judge Robinson: Mr. Halpin.

Mr. Halpin: If you will—no, I will not object to it.

Judge Robinson: You may answer the question.

Witness: Oh. The existing districts vis-a-vis Plan 2?

By Mr. Treese:

Q. Right. A. I don't think there has been any dilution, no.

Mr. Treese: Very well.

Judge Robinson: Counsel, are you all finished with this witness—you have something further, Mr. Shurtliff.

Mr. Shurtliff: Very briefly, Your Honor.

Recross Examination

By Mr. Shurtliff:

Q. Mr. Eckert, do I understand from your response to Mr. Treese's last question that in comparing Plan 2 to the

present plan, you did not believe that Plan 2 affects a dilution of black voting rights? A. I don't think that there is any unreasonable dilution of District B, as I believe. I believe it has slightly [453] increased black voting strength. District E is slightly increased. I believe one district is virtually the same and two districts are slightly less.

Q. That is in comparison to the present plan, the plan under which the five district councilmen have been elected? A. Yes.

Q. Now is it your judgment that the present plan does not affect a dilution of black voting rights in New Orleans? A. Well, you are talking now in terms of what Mr. Halpin was talking about earlier, about in terms of concentration of black population. I believe we have made some sort of distinction between comparing A with something that exists and talking about dilution in that regard and talking about as Mr. Halpin suggested, concentration of population and dilution in that regard?

Q. Let's see if I can help you in this way. In your judgment, —help us—why would not the present plan of reapportionment in the City of New Orleans be acceptable today? Why need we change it? A. Well, first of all, the Charter requires that the population be more or less equal so it has to be changed to comply with the City Charter.

Q. Are there any other things in the current plan that need to be changed? A. Well, I don't follow what you mean by need to be [454] changed.

Q. Are the population percentages, black and white, or the compactness features, the adherence to ward lines, are those factors all acceptable in your judgment? A. Well, the thing is, the population has to be changed and if it has to be changed, then all those other factors automatically take effect.

Q. How about the racial percentages? A. Of the various districts?

Q. As presently constituted? A. Well, as I understand it, if they were legal when they were formed, then those

districts would retain their legal effect until such time as they are changed.

Q. And is it your judgment that they were legal when they were formed? A. Evidently.

Q. And had anybody ever told you that they were? A. That they were legal when they were formed?

Q. Yes. A. Well, I believe the court looked at one plan Council passed in '60 and rejected that and evidently the plan that was adopted set aside the plaintiffs because no one else challenged it, so I assume it was legal.

Q. And that was in 1960? A. Yes, I believe '60 or '61. [455] Q. Was that in a State court? A. Yes, I believe it did go to the State Supreme Court.

Q. You stated in response to questions by Mr. Halpin that a given consideration is the present plan, is that correct? A. Yes, I believe so.

Q. Why is that? Did anybody ever tell you that you had to start with what you had now? A. Well, it seemed like the logical place to start.

Q. Why? A. Well, there is a certain degree of identity of people, being in the same district for ten years plus the other factors that had been considered when that plan was made, such as the ward boundaries, precinct boundaries, natural boundaries, etc In other words, there was a continuity involved.

Q. Further you indicated that you stated development of Plan 2 pursuant to Councilman Moreau's request before the Attorney General's decision on Plan 1 had been received, is that correct? A. Yes, sir.

Q. Why did you do that, did Councilman Moreau indicate the reason why he wished you to start work at that juncture in development of a new plan? A. Well I think the press and a lot of civic groups had complained about it. I think Councilman Moreau had felt sort of in a bind because his name was on it and he in that sense had [456] nothing to gain or lose by the districts' looks, so I think it was sort of a political black eye for him. He wanted to

get something that was acceptable. That was my impression.

Q. Acceptable to whom? A. To the Justice Department, of course.

Q. And to the people of New Orleans? A. Well, I also made the assumption that anything that would be acceptable to the Justice Department, or the courts would ultimately be acceptable and accepted by the people. I mean, I don't think you can please all the people.

Mr. Shurtliff: I have no further questions.

Judge Robinson: Very well.

Mr. Halpin: If I may ask one or two questions on recross?

Judge Robinson: Very well, Mr. Halpin.

Recross Examination

By Mr. Halpin:

Q. You answered in response to Mr. Treese's question that you didn't believe that Plan 2 diluted the rights of black voters, is that correct? A. Mr. Treese, I don't believe asked that question. He asked me to compare present districts, which is that exhibit on the left, and Plan 2, which is the exhibit on the right.

Q. Is your idea of dilution of black voting strength a dynamic concept in that it implies blacks being sort of worse off than they were before? Does that play into your idea of [457] dilution?

Mr. Treese: I don't understand that question. Maybe the witness does.

Judge Waddy: Maybe the witness does.

Witness: I was about to say, really, I don't understand what you are saying, worse off?

Judge Robinson: All right, why not ask of the witness to give his definition of dilution.

Mr. Halpin: If you will, I will just withdraw the question and approach it a different way that I can make it clear to the witness.

Judge Robinson: All right, very well.

By Mr. Halpin:

Q. For instance, Mr. Eckert, you would say that in 1954 the schools in New Orleans were segregated and you would say today that they were either segregated or not segregated, and it would have very little to do with a change from one to the other. When you talk about dilution, are you talking about dilution in the same sense, or are you talking in terms of a change from one concept, you know, from one system to another? A. Well, . . .

Judge Robinson: Wait a minute, just a moment.

Mr. Treese: I'm sorry, Your Honor.

Judge Robinson: I saw you rise, Mr. Treese.

Mr. Treese: Yes, I know, I was going to raise the same [458] objection. Maybe the witness does understand.

Judge Robinson: Very well.

Witness: Are you saying that the schools were totally segregated in 1954 and in 1973 we have come now to a situation that there is only de facto segregation, and perhaps, minority would be less worse off? Is that what you mean by dynamic?

By Mr. Halpin:

Q. Yes, are you considering the concepts of segregation and dilution similar in using the examples that I just gave? A. I am trying to see if I can analogize that in my mind.

Q. Let me try another approach.

To your knowledge, has there ever been a black person elected to the City Council of the City of New Orleans? A. No, sir.

Q. All right. In your understanding of dilution of black voting strength, if blacks are no worse off in terms of political voting strength and ability to elect city councilmen, would you consider their votes to not have been diluted? A. If they were no worse off?

Q. Right. A. In other words, in a reapportionment plan, they had identical percentages and rearranged them—population to accommodate it? Okay.

It's hard to hypothesize something like that. Off hand, I would say the only answer is it would depend on what the [459] districts looked like; it would depend on whether or not I though a black could be elected in the district.

Q. And it would have nothing to do with how bad off blacks were in terms of voting strength to begin in the—in your concept of dilution? That would not be a relevant factor? A. No and using my own concept of dilution, I am using it as a start, the historical makeup and I guess, you can say, yes.

Mr. Halpin. That's all I have.

Judge Robinson: Gentlemen, have you all finished with Mr. Eckert? May he be excused from this trial?

Mr. Shurtliff: He may, Your Honor.

Judge Robinson: Mr. Eckert, you are welcome to remain, but you are also free to leave.

Witness: Yes, Your Honor.

(Witness withdrew from the stand, having been excused by the Court.)

Judge Robinson: Mr. Treese, your appointment in the District of Columbia Court of Appeals, is that 2:00 o'clock today?

Mr. Treese: Yes, Your Honor.

Judge Robinson: And I take it from what you said earlier that no other counsel involved in this trial is also involved in proceedings to be heard in that Court this afternoon?

Mr. Treese: That is correct.

Judge Robinson: After having reflected on your colloquy [460] earlier today, do you see any reason why this Court cannot continue this trial in view of the fact that you have Mr. Stoner as your co-counsel and others as your co-counsel representing the Plaintiffs in this case while you are taking care of your business in the Court of Appeals?

Mr. Treese: I see no reason why he can't. I would prefer to interrogate the next witness; if I do not finish, why Mr. Stoner will continue.

Judge Robinson: Well, if we can suspend until you return; of course, it goes without saying, that you will be excused to attend your business at the D. C. Court of Appeals.

At this point, the Court will stand in recess for five minutes.

(Whereupon the Court recessed at 12:00 o'clock noon.)

AFTERNOON SESSION

(The Three-Judge Court reconvened at 12:04 P.M.)

Judge Robinson: Mr. Treese, call your next witness.

Mr. Treese: Councilman Philip Ciaccio.

Whereupon,

Philip C. Ciaccio

took the stand, and being duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Treese:

[461] Q. Councilman Ciaccio, would you state your name and spell it, please for the Reporter. A. Philip C. Ciaccio (spelling out) C-i-a-c-c-i-o.

Q. What is your present residential address, sir? A. 7341 Spring Lake Drive, New Orleans, Louisiana 70126.

Q. And what is your occupation? A. I am Attorney-at-Law and I am a City Councilman.

Q. Member of the Louisiana Bar? A. Member of the Louisiana Bar, yes.

Q. Any other Bar Association? A. The American Bar Association, the New Orleans Bar Association, the Federal Bar Association.

Q. How long have you practiced law? A. I have been practicing law 23 years, 1950.

Q. In your capacity as a City Councilman, what is your present councilmanic district? A. I presently represent

District E and have represented District E since I was first elected to that office; I took office in May of 1966 and I am in my second term.

Q. Had you run for public office prior to that? A. Yes, I have run for public office several times prior to that. I first ran for the House of Representatives for the same geographical area in 1969 and lost. I also ran for Councilman in District E in 1961 and lost. I then ran for Representative from the 9th Ward in 1962 and won. And then I [462] ran for Councilman in 1963 and won. I missed one, I run for re-election to the House of Representatives in 1964 and was re-elected and then was elected to the City Council in 1965 and took office in '66. I was re-elected to the City Council in 1969, for a term beginning May of 1970. Each time that I ran for office, I ran from the same geographical district as is the present District E. I had never run on a city-wide basis.

Q. What wards are included within District E? A. District E presently is comprised entirely of the 9th Ward of the City of New Orleans; the boundaries are co-existent.

Q. Now we have had many maps presented and offered in evidence, Councilman Ciaccio, and they all portray District E in the same fashion as you now see (indicating on the map). How far out does District E actually extend to the East? A. District E is a very—extremely large geographical area; it comprises about one-third of the land area of the City of New Orleans. Eastward, it runs all the way to Saint Bernard Parish, which would be along the River, and also, runs to Saint Tammany Parish in the area along the lake. So it covers quite a few square miles and on the East, it is bounded by the two parishes that I have mentioned. It runs from the Lake to the River. If you were looking at the map to your right, which would be Plan No. 2, if you follow that land down there and then continued, instead of that dog leg that takes place there, and continued down that line, that is the present District B. It [463] starts at Franklin Avenue to the River and then continues on along that line which goes into Almonaster and then all the

way—well, that's the River line (indicating by pointing to the map), but I was going back up north.

Everything east of that is District E, and of course, it includes the very large growing areas, you know, and all that, which would be considered suburbs in other cities, but it is within the corporate city limit of the City of New Orleans.

Q. For purposes of graphic displays in this case, however, the vast majority of the population in District E exists within the confines of these exhibits, isn't that right? A. Yes, that is right. As you get further out, it becomes very sparsely populated at this time.

Q. Now Councilman Ciaccio, I believe you have just stated that the present District E—I am now pointing to Plaintiffs' Exhibit 3, which is the second plan—the present District E includes this area (indicating) which under present Plan 2 is included within District D, is that correct? A. That is correct.

Q. Who is the councilman who represents District D? A. That is Councilman John Lambert.

Q. Why was it necessary to adjust the population of your district in the redistricting of the City of New Orleans? A. Well, the gross pattern of the City has been that as District E has been expanded eastward, as a result of the last [464] census, I had approximately 18,000 people in my district above the norm. So it meant that District E had to be reduced by approximately 18,000 people. And in order to reduce the size of District E, the consideration came up as to how would that be done. It so happened that District E and District D had a contiguous line all the way from the River to the Lake and part of District D at one time was part of District E. The reapportionment in 1960 pushed the line over to the East as District E was becoming more thickly populated and areas being developed. In order to comply with our Charter requirement of having five districts of apparently equal numerical population, it was necessary that my district be reduced in size by approximately 18,000 people.

Q. Are you familiar, sir, with the population of your district in terms of racial division? A. Yes, I would say that my district as presently constituted has a racial makeup of almost identical 50 per cent white and 50 per cent black.

Q. All right. Are you familiar at all with the registration division by race within your district? A. My recollection would be that the approximate voter registration would have been 60 percent white and 40 percent black. One of the reasons, I believe, for the disparity in voter registration versus population is the fact that very large public housing projects are located in my district; it [465] has a usually high percentage of young black children compared to the total population in the area, so that they are not eligible to register to vote. But I would say that the registration as I have approximated it 60 to 40 per cent.

Q. All right, could you identify that housing project? A. That would be the Desire Housing Project which is located District E.

Q. Are you familiar with the population division by race under proposed Plan 2 within your district, District E? A. It would be, if I recall, correctly, I believe that the population would be a majority of black versus white. I think it would probably be 51 or 52 per cent black and 48 per cent white, or 49 per cent. It is very, very close, but it changed about two percentage points.

Q. In the process of running for the Council, in your last two successful attempts, have you had an opportunity to analyze your election results? A. Yes, I certainly analyzed them the day of the election and I have enjoyed a great deal of confidence and success in both the predominantly white and black areas of District E and have been fortunate to obtain an extremely high percentage of votes in the black—the identifiable black areas, as I'd say, ranging anywhere from 80 to 95 per cent, some precincts 99 per cent.

Q. That is 80 to 99 per cent of the black areas that [466] have supported you? A. That is correct.

Q. Now are you able to estimate what percentage of the white population in District E supported you? A. I would say anywhere from 60 per cent to—depending on what neighborhood, 80 per cent. The last time that I ran for office in 1969, I won by a very substantial majority; I think I had 22,000 votes against 5200 for my opponent. So I, obviously, received a very high percentage of votes in both areas.

Q. I wonder if you could describe your duties as a City Councilman? A. Well they fall into several major categories; one would be purely legislative; we are the governing body of the City of New Orleans and we do pass all ordinances and adopt motions and resolutions. We also are the appropriating agency of the City. We levy the taxes and we adopt the budget. Of course, the Mayor recommends the budget, but we are pretty much in the same status as, I would say, the Congress, in that we pass laws; we are in charge of appropriating the funds. We do not have any executive responsibility. We do not head any departments. We head what we call a strong Mayor-type government where the Mayor appoints all of the department heads and the City Councilmen theoretically are purely legislators. In addition to the function of legislating and budgetary, I [467] would say that a great deal of the time of the city councilman is taken up in work involving community activities, but I don't mean capital projects, social projects, social problems, housing problems, matters which might be considered part of the executive responsibility, but which, in fact, end up in the councilman's office whether the Charter says it should be there or not.

Q. Could you give us some examples of that?

Judge Robinson: What's the relevance of that, Mr. Treese?

Mr. Treese: If Your Honor please, opposing counsel has been inquiring as to the past segregation atmosphere in the City of New Orleans. They proposed to the Court that there is evidence in the recent past in the City of New Orleans of activties which tend to discriminate by race with

regard to all of these communities, and particularly with regard to the minority groups within the City of New Orleans. I will proffer this, Your Honor, that this witness has a very honorable record of working substantially outside his required duties as a city councilman in an effort to provide substantial assistance for the minority group within his district and as such, I would ask that this Court permit that evidence.

Judge Robinson: Very well. There was a pending question. You would save time if you restate the question.

Mr. Treese: Yes, Your Honor, I will restate the question.

By Mr. Treese:

[468] Q. Councilman Ciaccio, I wonder if you could give the Court some examples of the activities you performed for your constituents outside your required duties as City Councilman? A. The area which would be east of the Industrial Canal was substantially and very tragically devastated by Hurricane Betsy in 1965. It's a predominantly black area. There was a great deal of loss of property and loss of life.

In 1966 after I got on the City Council, a concerted effort was made to attempt to obtain urban renewal funds and all types of Federal assistance for this area. We had no enabling State Urban Renewal Legislation in the State of Louisiana. We were one of the few states in the Nation that had none. Trips were made to Washington by myself, citizens groups, both black and white, and other officials and we did obtain funding to the extent of around $350,000 for a feasibility study, although, in fact, we had no real legal basis for urban renewal projects at that time.

Subsequent thereto, I was quite active petitioning the State Legislature and participating with the then-Councilman Landrieu who is now Mayor, to have enabling legislation adopted which allowed the City of New Orleans to become eligible for urban renewal funds. That legislation was adopted. The only ongoing urban renewal project in the City of New Orleans is in my district in the 9th

Ward. We have been able to maintain many millions of dollars for funds for capital improvements in this area. [469] There were many, many meetings involving literally thousands of people who attended to explain the program, what it would do for the area, to rehabilitate the homes and to provide social advantages and economic advantages and I would say that probably 60 per cent of my time from 1966 to '70 was spent in problems involving the lower 9th Ward and the Desire Housing areas, and some other parts of the predominantly black areas of District E, which were in a tremendous need of improvements, both physical and social, resulting from expenditures and other activities that preceded my taking office. Two of the Federal Model Cities areas are in my district. I have worked very closely with the Model Cities Program. I have served on the board of directors of Total Community Action which was the New Orleans Community Action Program. I've been on the board of directors of the Social Welfare Planning Council and have attended many meetings with the KAP Neighborhood Organizations which were organized back in the middle '60's and which have produced a great deal of tangible advantages for the people who live in District E.

Mr. Treese: Thank you, no other questions on that point.

By Mr. Treese:

Q. Now Councilman Ciaccio, with regard to the Council's consideration of Plan 2, were you apprised of any alternative plans at that stage? A. Well, my recollection is that Plan 2 was introduced [470] by Councilman Moreau. I reviewed Plan 2 at the time that it was introduced and in my opinion, it presented a fair method of reapportioning of the City of New Orleans. I remember the only reason we were called upon to reapportion in the first place is because of the change in population patterns because some of the districts had become too small or too large with regard to numerical basis. I reviewed that plan and thought it was a fair one. If I recall correctly, there

was only one amendment made and that was to straighten out the line which now you see separating District B—District E and District D. There was one precinct which had a dog leg in it and that line was straightened out. But other than that, the plan that you see there, (indicating) is identical to the one that Councilman Moreau introduced.

Q. Were you aware of the plan presented by the NAACP which has been introduced as Plaintiffs' Exhibit 50? A. Yes, I was. I had been aware of it for several months. It had been first presented to us during the hearings that we had on the first redistricting plan.

Q. And did you personally have any objections to that plan? A. The main objection I had is as councilman from District E is that I thought that the line which ran along the River from west to east had no logical basis, in fact. It carved out a sliver of District E. It so happened that [471] that sliver which as I recall ran from Saint Claude Avenue to the River would have removed just about every white resident and white voter from that portion of District E which was located along the River, and it appeared to me to be a type of gerrymandering which I thought did not meet the guidelines of the Justice Department, the Voting Rights Act, or any other type of guidelines. Except for that particular peculiarity of the plan which existed in Exhibit E, the only other thing that I noticed of a dramatic change was that it placed Algiers in District E rather than District C and neither geographically or historically or otherwise had Algiers been a part of District D. I believe the plan that we finally adopted left District A and District B the same as in the NAACP plan and District E would have only been changed to remove the elongated line running east-west to the picture that you see on the second plan (indicating by pointing).

Q. (Counsel indicating on the map.) A. That's correct.

Q. In other words, it would have preserved the Mississippi River front under District E, Plan 2, and under the NAACP plan, it would have deprived District E of the

Mississippi River front? A. Yes, and I might say that the people living along that area actually have been the oldest residents of District E, the 9th Ward, actually began in that area there. There are [472] families that have been living there for several generations, whom they are probably over a hundred years old. There is a good deal of neighborhood identification with the 9th Ward as District E is called and there was in my mind no logical basis for removing that entire area from District E in the manner that was being proposed.

Judge Robinson: Mr. Treese, when you reach a point where it would be convenient to recess for lunch, you let me know.

Mr. Treese: I have, perhaps, two more questtions, then I think I can go to the Court of Appeals and let Mr. Stoner take over.

By Mr. Treese:

Q. Mr. Ciaccio, did you have deliberations with Mr. Lambert as your adjoining councilman of District D with regard to division of population to achieve the balance as required? A. Councilman Lambert and I spoke on possibly one or two occasions. I knew that 18,000 people had to be removed from my district. The logical method of doing it as far as I was concerned would be to add it on to Councilman Lambert's district which was contiguous to mine. The question then arose, how would you do that. The method in which you see it done in Plan No. 2, the one that is present before the Court, actually transferred from District E to District D an area that is compact that was contiguous to the then-existing District D, [473] population wise, it pretty much retained the same type of theoretically ideal ratio which then existed in District D which was 50 per cent white and 50 per cent black. The net effect of it was that it transferred to District D more whites than blacks, so that I ended up under that plan with a larger black population and voter registration than

I have under my present district. But it appeared to be a compact, logical way of doing it, both geographically, historically, neighborhood wise, etc. And we really had no controversy, fight over it; this was something that was basically what the staff recommended and I certainly agreed to it. There was one precinct that was a little different which we changed and that was the only change made.

Q. One last question, have you as councilman ever expressed the opinion or a vote on any of these plans with regard to whether or not two or more incumbent councilmen shall be forced to run within a single district? A. No, there has not been any overriding consideration. I gave no instructions to Mr. Eckert or to Mr. Pezant with regard to whether or not councilmen should be combined in districts or not. That plan does not combine any of the incumbent district councilmen, but I certainly—I never at any time gave any instructions that that should not be the case. If it came out that way, then, of course, fortunately or unfortunately, may the best man win. But I did not instruct [474/499] the staff to in any way draw up a plan which would not throw councilmen in an election against each other.

Mr. Treese: Your Honor, that is all.

Judge Robinson: We will suspend the examination of the Councilman at this point until you are able to return this afternoon, Mr. Treese.

Mr. Treese: Your Honor, I have no quarrel with Mr. Stoner protecting the Plaintiffs' rights on cross-examination in my absence.

Judge Robinson: Is that agreeable to counsel?

Judge Waddy: Do we understand from that that you have finished your direct-examination?

Mr. Treese: That is correct, Your Honor.

Mr. Shurtliff: We have no objections, Your Honor.

Judge Robinson: Very well, we'll resume after the luncheon recess with cross-examination of the present witness. Just before we take that recess, it might be helpful if counsel knew that one member of the Court has an en-

gagement that he must fulfill in connection with other litigation before the Court at 4:00 o'clock this afternoon and so it will be necessary to make the adjournment at 4:00 o'clock at that time.

At this point we'll stand in recess until 1:45 this afternoon.

(Whereupon the Court recessed at 12:35 P.M.)

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[500] MID-AFTERNOON SESSION

(The 3-Judge Court reconvened at 2:00 p.m.)

Judge Robinson: Mr. Shurtliff. Councilman, would you resume the stand, please.

(Witness resumed the stand.)

Cross Examination

By Mr. Shurtliff:

Q. Councilman Ciaccio, you testified that because of the population statistics, your District E had to lose some 17 or 18 thousand persons in order to achieve the ideal, is that correct? A. That's correct.

Q. Did you discuss with other councilmen, or any councilman in particular where those 17 or 18 thousand persons should go? A. Yes, there was one, or possibly two discussions with Councilman Lambert. Neither conversation took longer than, I would say, five minutes. The general tenor was whether or not the location of the areas of District E that would be transferred to District D, and we were both presuming that I would transfer, or the line would be transferred from E to D, whether it would come from the Riverfront area, or from the area that would be to the north of that map (indicating), which would be adjacent to the Lake. This was the extent of the conversation. It so happens that [501] both areas have a racial balance of almost identical proportions, that both of them —they are different economic levels, but it so happens

that in both areas, you have a combination of both Black and White residents. So that if you drew a line in either place, you would have pretty much the same effect as you see with the plan that's presently on the board.

Q. Was it your judgment that the 17 or 18 thousand persons that you had to give up from District E that the balance should be White or Black, or mixed, or what was your judgment along the line of racial characteristics of the group that would be dispersed to other districts? A. Well, since my district was basically evenly divided populationwise, it was my feeling that there should be no great disparity with regard to the transferral of either an excessively large number of White or Black voters, or residence in order to maintain what is theoretically the ideal situation, that is, with neither group being in the minority. I had a 50-50 population and if I transferred 18 thousand which would be close to that ratio, I'd be maintaining pretty much the same population ratio as presently in existence in District E. As it so happens, the way it was drawn up, there were more White residents and White voters transferred from E to D than there were Black.

Q. Was it your judgment that your district, District E [502] with its approximate 50-50 characteristic was an ideal district? A. I would say it was one of the fairest methods that I've known and it was certainly at that time theoretically meeting all the criteria of the law insofar as popultion was concerned. It was not by design; I inherited District E. I ran from that district and it so happened that the population was that way, and I personally thought that it would be fair to maintain it, at least in an approximate ratio, populationwise, which then existed.

Q. Was it your judgment that Districts A, B, C and D should also be maintained in their approximate racial characteristics? A. No, it was not. And . . .

Q. Why was it not? A. Well, Districts A, B and C were—well particularly B and C had different apportionment problems as I did, so they had to gain people. I really was not particularly familiar with the population

ratios in those districts, nor particularly familiar with the population ratios in District D. I was very familiar, by virtue of having been in office in District E for quite a number of years, as to what the population ratios were in my district, but I did not have any very strong feelings or opinions, or really a great reservoir of knowledge as to the racial makeup of the other [503] districts. It was my impression that District B, which is pretty much—well, it's been changed somewhat by the plan, but that District B had a majority of both Black residents and registered voters, even though Councilman Sapir, elected from that district in 1969, is White. I knew that District A had a majority of White population of voters. But if I had to give you the exact ratios, I could not have given them to you then, and probably, couldn't give them to you now unless you gave me a chart and I could refer to the figures.

Q. But did you not study the figures at the time you decided whether or not to support the redistricting plans cast in the form of ordinances? A. Yes, sir, I reviewed them.

Q. And did you review them from the perspective, from at least one perspective, of determining whether or not there had been a change in the racial composition of the districts other than your own? A. I observed them insofar as to making any individual specific determination as to exactly what effect they had on the other districts. It was not something that was indelibly impressed in my mind.

I would say that insofar as Plan Two was concerned, the one that is presently before the Court, that I do have, I think, a great familiarity with those figures at this time insofar as what the net effect was. But I would say that [504] primarily, my first attention was directed as to how would we rearrange the population in District E and then hopefully, how would we come up with a plan for the remainder of the City of New Orleans that would be fair and equitable. I did not see any great problem in doing

that for my district. I did see problems in other districts, but that did not specifically apply to District E because of the way it was constituted.

Q. So it was your judgment that the racial composition of District E should not be seriously changed by any redistricting plan? A. By virtue of the fact that it was then 50-50, almost mathematically that way, and theoretically, there was no minority in District E, that we had an equal number of Black and White residents in District E. I think this was the only one that was that way in the City.

Q. Do you know whether any other city councilmen had a similar judgment with respect to his own district? A. As to whether or not it should stay exactly the way it was?

Q. Right.

Mr. Stoner: Your Honor, I would have to object to this question. The witness can testify as to his own judgment. I don't know that he is competent to testify as to the judgment of other members of Council.

Judge Robinson: I thought the question was, "Do you know [505] whether . . . ?", was that it?

Mr. Shurtliff: Yes, Your Honor.

Judge Robinson: He may answer that question. If he doesn't know, all he has to do is say he doesn't.

Witness: I don't know exactly what was in the mind of the other councilmen, although . . .

Judge Robinson: You've answered the question.

Witness: I don't know exactly what was on their minds, sir.

By Mr. Shurtliff:

Q. Councilman Ciaccio, you stated that the NAACP Plan which you studied from your point of view had at least two things wrong with it; let us say, (1) that it split Algiers on a basis that was not historical and also dealing with the division of persons along the River from District E, is that correct? A. The NAACP Plan did not split Algiers, I don't believe; I think it placed Algiers in District D.

Q. I see, I'm ... A. Yes.

Q. I'm sorry, I misspoke. It combined Algiers in a fashion? A. Yes, it kept it as a unit, but placed it in District D where it had never been before, historically, or otherwise. Algiers had been originally in District C; it is [506] now in District A; it had never been in District B and I can see no reason why it would be combined with District D.

The other part which, frankly, I considered more objectionable from my own personal standpoint was the manner in which the east-west line was drawn along the Riverfront which was, apparently, an attempt to remove from District E an area which was just about, I would say, ninety percent White in vote in population and in voter registration and I could see no logic for drawing the line that way. It's like taking a sliver. It certainly violated the guidelines of compactness and reasonableness, and to me, that was one that didn't make sense, other than to remove those voters from District E.

Q. Algiers under the current plan of apportionment is in District A, is that not correct, sir? A. That is correct.

Q. How long has it been combined with the other portion of District A? A. I think since the last reapportionment, which I believe, was in 1960.

Q. And before that, sir, where was Algiers? A. In District C.

Q. And for how long a period was it in District C? A. Since the City Charter was adopted in 1954.

Q. Before that, there was not councilmen by districts? A. Before that, we had a commissioned council form of [507] government where the councilmen were elected city-wide and served as department heads in addition to being legislators; they were—one was head of the Parkways Commission; one was the head of Streets, one was head of Finance. But that form of government was done away with when the Home Rule Charter was adopted in 1954 and the present form of government was adopted by the people.

Q. And how many commissioners were there under that form of government? A. I think there were seven, the same number as we have now.

Q. They were all elected at-large? A. That is my—yes, they were all elected at-large, sir, from my recollection; I was rather young at that time, but I do recall that being the case.

Q. There have been two reapportionments under a 5-2 plan prior to this? A. No, one; this is the second reapportionment.

Q. But the system was first inaugurated in 1954? A. '54, that would have been the first time that the district council form of government was created. And then as a result of the 1960 census, there was a reapportionment and this would be the result of the 1970 census.

Q. But when we talk about history in terms of the 5-2 plan, or in terms of drawing the councilmanic districts [508] on the basis of wards, we are in no respect going back further than 1954, is that correct, sir? A. That would be correct insofar as councilmanic districts are concerned; although, insofar as ward representation is concerned, you go back eighty years. Our senators and legislators and representatives were elected by wards and have been since 1921, or prior to that time. That was the basis of representation in the state legislature and our City Charter set out the councilmanic districts by wards and precincts.

Q. At the present time, the House of Representative districts are not by ward, is that correct? A. They are designated by wards and precincts, but they cross ward lines. Some of them are totally within—for instance, in District E, we have two representatives that are totally within the Ninth Ward and we two representatives that we share with adjoining wards. It depends on the size of the wards; some wards have their own representatives; some have combined them as the lines were redrawn.

Q. You stated that the NAACP Plan in the way it dealt with District E created what you characterized as a sliver along the Riverfront, is that correct? A. That's correct.

(Mr. Treese entered the courtroom at this point and resumed seat at counsel table.)

[509] Q. And that it removed basically ninety percent White persons from District E and placed them in its proposed District D, is that correct? A. That is correct; it might have been even a higher percentage than that.

Q. In your judgment, was that a gerrymander? A. It appeared to be gerrymandering White voters out of District E, yes.

Q. And is that your definition of "gerrymandering", taking a block of voters of one race or another out of one district? A. If the line that is drawn has no apparent logic or reason, other than to transfer a certain group of individuals from one geographic area into another one, then the term that has normally been used when you do that is "gerrymandering".

Q. And if it has no apparent purpose other than to do that, to achieve that? A. This is correct. If there was some geographical reason, some historical reason, if there was any reason other than the only one that was apparent to me because of my familiarity with my district, I could characterize it otherwise; but I would have to say that that area has never been, councilmanicwise, drawn that way. The neighborhoods that were being removed have been traditionally joined together by [510] mutual interests, economic, religious, social, everything else, and to bodily remove them from an area where they been for an excess of a hundred years and move them to another district did not seem to have any particular logic behind it.

Q. Would you believe the compatibility of socio-economic or ethnic backgrounds forms a basis for keeping groups together? A. Well, you have a community of interest in that area involving churches, schools, civic activities, playgrounds, a whole gamut of normal inter-relationships between people who have lived in an area for years and years and I think that there is a community of interest between those people who live along the Riverfront and the people

who would be going north towards Florida Avenue. You have had a dramatic change in population patterns in my district in the past ten years with the line moving towards the River where that area has become predominantly Black, whereas ten years ago, it might have been 50-50. This is a population pattern, a trend that has been taking place.

Q. Then it's your judgment that the line is drawn in the proposed NAACP Plan to create a district of approximately 118 thousand, 5 hundred persons was not a sufficient purpose to override what in your judgment was a gerrymander? A. Let me state my position more succinctly. I'm not [511] accusing the NAACP of any nefarious purpose in drawing the line that they drew. The effect of drawing that line was to transfer an area that is basically ninety percent White into another district. The NAACP may have felt it had very good reasons for doing that and I know the officers and directors and have a great deal of respect for them.

On a purely logical basis, without getting into any dispute over race or gerrymandering, or anything else, I think I could sit down with them and say that I think the line as on the so-called Moreau Plan is a more logical line than the one they drew. Now reasonable men might differ over that. It isn't something that is a mathematical certainty, but in my best judgment as someone who has represented this area since 1962 in one capacity or other, which would be some twelve years, I did not feel that it would serve a useful purpose to extract and remove that entire area from District E. The people from the NAACP who drew up the plan may have thought it would have. We have a difference of opinion and I think that it could be left that way without me accusing them of intentionally trying to do something that was wrong. Certainly, you could draw up fifteen plans and never have everybody agree on every aspect of it. I don't question their integrity or their reasons, but I did question the effect.

Q. Councilman Ciaccio, have you ever observed or seen a redistricting proposal that generally ran east to west

[512] as opposed to north-south? A. Yes, I have seen some proposals than ran east-west.

Q. And what was your judgment as to those proposals? A. As far as I was concerned, there were two drawbacks with those type of proposals; (1) you were making a rather dramatic change in the existing general makeup of the district lines which theoretically have worked very well for both the White and Black residents of the City of New Orleans. It was an extreme departure from what had been our form of government insofar as the governmental structure is concerned since 1954.

The other objection that I had to it, and I can't recall any of them specifically, but under the present method of councilmanic districts, we have been able to avoid in New Orleans the polarization that has taken place in many other cities. For instance, in District E, and this would apply to many other districts, I have a combination of poor Whites and poor Blacks. I have middle-class Whites and I have middle-class Blacks, and I have fairly wealthy Blacks, and I have the finest and wealthiest Black subdivision in the City of New Orleans, all in District E. I canot afford to become parochial and say, "Well, I'm just going to vote for my White constituents and ignore the Black ones", or vice versa. You walk a very fine line to keep everybody happy, but as a result of it, you have a much broader perspective because you don't just represent one segment of the community.

[513] Now if you draw the line east-west, you'll end of having all White districts and all Black districts, although it would be very difficult to create two all-Black districts without some very unusual configurations because the housing patterns in New Orleans are extremely integrated. We just don't have housing patterns that you have one section that's all Black and one section that's all White, except for possibly some of the housing projects in some areas of the Lakefront.

In my own opinion as a public official, I honestly believe that the interests of all the citizens of New Orleans are better served by having a councilman representing all of the segments of the City, rather than one, and although it has caused me some person grief on occasions because, obviously, there are times when I would vote for appropriations for Black neighborhoods, and that has been the majority of times, when some of my White constituents got unhappy, and vice versa. The net result has been as long as they think you're doing it fairly, that we've produced some fairly good government insofar as the City of New Orleans is concerned and I really believe that the east-west type of redistricting would produce a type of polarization that New Orleans doesn't have and doesn't need.

Now this is a philosophical view point that I have and is one that I have made on the basis of my lifelong residence in the City; I've lived there with my wife and my [514] ten children; I've been in government for many, many years and I just think that I am entitled to have some opinions along those lines.

Q. Is it your judgment that in your District E that you, as you stated, has within its confines both races and various economic levels, that those persons, those groups have different interests, different desires from city government? A. They have—they all have the same desire to get the maximum city services that are possible. They all want the best schools and the best streets and the best playgrounds and the best garbage collection—everybody wants that. Then it's a question of how do you balance who gets what. I have some areas in my district that are way behind the times, that were neglected for many, many years and it's going to take a lot of catching-up for them to catch-up with some other parts of the City, and these areas happen to be basically Black, and we've been trying to catch-up. But I do think that I have been able to, for instance, vote for literally millions and millions of dollars of projects in my district which went solely into all-Black neighborhoods with-

out suffering political retribution by my White constituents because, in fact, I have tried to balance the interests of all parties and have also tried to educate those people who already have playgrounds and paved streets, et cetera, that it's fair and equitable to go into a low economic area and pave the streets [515] for free, which is the first time in the history of New Orleans that we've done that.

This is the philosophy of government. I don't know whether it's pertinent to this case, but it's one that I hold, and I really believe that if we had an all-Black council over the past four years, instead of an all-White council, we could not have voted one penny more of appropriations, we could not have voted as much appropriations for the Black areas of New Orleans as this Council did. I think the fact that we were constituted by accident and by election, we had the freedom to do some things, that possibly, an all-Black council could not have done.

Now again, we're getting into another field, but this is my strong feeling in this matter.

Q. I am not sure I understand the last, the all-White council has been able to devote a greater proportion of this City's assets to needs in Black areas than would in your judgment an all-Black council because the Black council might feel other pressures? A. I'll give you an example. If you had a councilman, a district councilman, in the east-west configuration, along the Lakefront who represented ninety-nine percent White and he was called upon every week to vote for funds to build health clinics, to pave streets for free, to do all kind of things in an all-Black neighborhood, sooner or later, his all- [516] White voters are going to decide that he wasn't the type of councilman they wanted and what was he doing for them. Now this is just a fact of political life. We have not had that type of voted reaction in New Orleans. We have had almost a unanimous vote on every appropriation and there has been a great magnitude in the past four years dealing with capital improvements in very poor Black neighborhoods and we're had no

reaction publicly from the White electorate. We've had some grumbling, but we've done, I think, a fairly good job of educating the people of New Orleans that the money was being spent where it was needed and it was proper to do so. And I think we were able to do this because we happen to represent a multi-racial constituency.

If you went to the east-west configuration and say, "We're going to create by design some kind of way, all-White districts and all-Black districts, and we're going to guarantee that we're going to elect Black councilmen because we have created an all-Black district", then I sincerely question whether he could get as much done if it were redistricted that way as was done by the present Council. Now I'm not trying to say that the Council should stay all-White and I don't think it will stay all-White. But I don't believe our job in redistricting required us to create irregularly-shaped districts solely for the purpose of erecting either Black or White and I think it's possible under the plan that [517] you have there (indicating by pointing) for Blacks and Whites to be elected.

Q. Is an east-west—an east-west plan would be irregularly-shaped districts in your judgment? A. Not necessarily, no. No I imagine you could come up with lines that would be fairly straight, if that were the criteria. You wouldn't have to zigzag all over the place. I think you could probably come up with districts that on their face would look as regular as those do. Yes, I'd agree with that.

Q. You indicated a few moments ago that another objection that you had had to east-west lines was that the lines that are currently operative have worked pretty well for Black and Whites in the City since they have been used, is that correct? A. I believe that the governmental structure of the City, insofar as the councilmanic districts that presently exist and as proposed, have worked fairly well for the City of New Orleans, both Black and White, yes.

Q. What do you mean by "worked well"? A. Well, presently and over for the—I would say—the period of

time that I have been in the city government, we have had what I would consider a high level of racial harmony and cooperation. We have also been able to implement social programs throughout the City which were somewhat revolutionary [518] in scope for a southern city, such as the Public Accommodations Act, which we adopted back in 1970; I think about the only one, possibly, in the South, there may be one in Atlanta. We have been able to do a great deal with the federal programs which require seed money from the City of New Orleans to enhance the health and the physical well-being of those Black areas which had been neglected for hundreds of years and we've done this without having a great deal of governmental, or other type of upheaval. We've had a fairly cooperative, calm progressive City. We think we're on the way to a new era. We have a man who is certainly extremely conscious of the rights of minorities. We have tremendously increased the participation of Blacks in the city government insofar as employment is concerned. It's probably up to forty percent of the total work force.

What I'm saying is the type of government that we presently have is working as well as any I know in the United States insofar as the problems of taking care of those things which need to be attended to. Now we don't have a monumentum but I think we've done a fairly good job.

Q. You stated that you believed that under the present plan, Plan Two, or the plan before the Court that Blacks could be elected? A. Yes.

Q. In any or all districts, or where? Would you [519] indicate in your judgment where Blacks could be elected? A. Well, if you look solely at numbers, and I believe we went through this dissertation a little bit in my deposition, District B under this Plan has a numerical preponderance of Blacks, both voters and population. Theoretically, if every Black voter voted for a Black candidate, then you would have a Black elective in District B. I don't think it will happen that way. I don't think there is a monolithic voting pattern in New Orleans today.

District E, where I reside, does not have such a tremendous disparity in voting strength that it is inconceivable that a Black candidate could not be elected from District E. It's possible. I think that the result of the election in Atlanta yesterday indicates that a Black candidate can win in a city which has a majority of White voters.

I'm not too familiar with the voting percentages, or the population percentages in Districts C and D under the new plan. But I think the only place where you have a tremendous White majority under this new plan is District A; it's probably like eighty percent, if I recall correctly. But the rest of them—theoretically, if the public voted on the qualifications of the candidates and the candidates who offered themselves, be they White or Black, met the requirements of the voters, they should get elected. And I think that this trend has been established in the City of New [520] Orleans by virtue of the fact that we have in citywide elections elected a judge for the Criminal District Court recently, a judge for the Fourth Circuit Court of Appeals, we have the president of the school board, all of whom are Black and who won at citywide elections where the White registration certainly was much larger than the Blacks. So I don't think the mere fact that you look at the percentages means that a Black candidate can't win if he's the best candidate.

Q. Was Judge Moriele (phonetic spelling) the best candidate? A. Was he? Yes, he was.

Judge Robinson: Counsel. I think you're getting a little far afield; let's stick to the issues in this case.

By Mr. Shurtliff:

Q. On what do you base your conclusion that persons—voters in New Orleans do not vote on a racial basis? A. Well, one of the conclusions was some of the historical facts that I recited just a moment ago. These are instances that have happened certainly in the last four to six years

where Black candidates have run on a citywide basis and have defeated White candidates. This is certainly an indication that the Whites are not voting as a block and the fact that in District B in the last councilmanic election, a White won for city councilman, although there were a majority of Black voters in District B who indicated that the [521] Blacks were not voting as a block in the City of New Orleans. And I don't believe you're going to see that happen unless some politician who takes a very antagonistic demagogic position actually forces either the Whites or the Blacks to vote as a block as a matter of reaction.

It will not happen by virtue of their present inclinations. It might happen if someone would tell the Black voters, as happened back in 1962, "I don't want your vote". If you do that, then certainly, they are not going to vote for. But right now everybody is seeking everybody's vote. No one can afford in the City of New Orleans to ignore the votes of either the Black or White community because you just can't get elected that way.

Q. You stated that in 1962, a candidate for mayor indicated to the Black community that he did not want their vote? A. That's correct.

Q. And was the result a block vote? A. Sure was. The Whites voted for him; the Blacks voted the other way and I happened to lose that election; I was running for councilman and I happened to be on the other side. I got most of the Black votes, but I didn't win the election. That's the last time that it's happened to my knowledge in the City of New Orleans.

Q. You indicated that a Black has been elected to [522] the Criminal District Court, is that correct? A. That's correct.

Q. In an at-large election? A. Yes, sir.

Q. Was that the first election in which that candidate had run? A. To my knowledge. He may have run for some lesser office, but that's the first time I recall. He was appointed to the Bench and then ran for election on a citywide basis and was elected overwhelmingly.

Q. Had he not run for the City Council at-large two years previous? A. No, I'm speaking of Judge Augustine. To my knowledge, he did not run for councilman at-large.

Q. I see. A. I'm speaking of Judge Israel Augustine, Judge of the Criminal District Court. Now Judge Moriele who is now a Judge of the Fourth Circuit Court of Appeals will be taking office shortly. He did run for councilman at-large in the election of 1969 and only lost by a few hundred votes out of hundreds more or thousands. I would say he only lost by—I'm guessing, but I think around—certainly less than a thousand votes.

Q. Was Judge Augustine supported by the White community in his election? [523] A. Yes, he was. When I say the White community, he was supported by the White —well, he had to be supported by everybody; he won a resounding victory and . . .

Q. Was he . . . excuse me. A. . . . and it had to comprise both White and Black voters to win by that large majority.

Q. Was he endorsed by White political organizations? A. Yes, he was.

Q. Was he endorsed by White political leaders? A. He was endorsed by White political leaders, by White civic leaders, by Black political leaders, by Black civic leaders. He was an outstanding individual who was endorsed and supported by a very wide range of people in the City, yes. And I think he was endorsed by the local newspapers.

Q. And he is on the Criminal District Court? A. Yes. That's the Court of General Jurisdiction. In New Orleans we have criminal and civil courts, and this would be the Criminal District Court.

Q. How many judges in the Criminal District Court in New Orleans are there? Do you know, sir? A. I think there are approximately—I believe there are ten. I could be wrong.

Q. And the position to which Judge Moriele was just recently elected, but has not yet assumed office, was what, sir? [524] A. Fourth Circuit Court of Appeals, that

would be our appellate court; that's the second highest court, right below the Supreme Court of Louisiana.

Q. And he has previously run for the City Council at-large? A. That's correct.

Q. An he lost that election? A. Yes. He had previously, also, been elected to the state legislature. He was appointed Juvenile Court Judge and then ran and won as a Juvenile Court Judge. So he has won to my recollection two city-wide elections.

Q. Was his election to the House of Representatives city-wide? A. No, it was not; it was from a district there. I think he ran from Ward One or Two. It was a small—it was a geographic district located at that time, I think it was in District C.

Q. And do you know, sir, what the racial composition of the House District from which Judge Moriele was elected was? A. It was predominantly Black.

Q. And were there other Blacks in the legislature at the time Judge Moriele was elected? A. I believe he was the first one, I think, who was elected in modern times. There are several now.

Q. Was Judge Moriele supported by White political [525] leaders. A. Yes, he was.

Q. Was he supported by White political organizations in his race now, that is, before the Criminal Court of Appeals? A. You mean for the Circuit Court of Appeals?

Q. Circuit—Circuit Court of Appeals. A. Yes, he was.

Q. Was he supported by White political leaders when he ran citywide for the at-large seat? A. Yes, he ran on—he was endorsed by at least two candidates for mayor, and possibly three, I don't recall; but I know he was on two tickets, if I recall correctly, one of which was Mayor Landrieu's ticket who is our present mayor.

Q. How many members of the Circuit Court of Appeals are there, sir? A. I believe there are seven.

Q. Doctor Spears is the president of the Orleans Parish School Board, is that correct, sir? A. He is a member of

the Orleans Parish School Board; there are five members. All are elected at-large. They select their own president. He has served as the president of the school board on at least two occasions. At least, they will elect you for a year at a time by their own board. It's a totally separate governmental agency in no way controlled by city government. They have their own taxing authority, but [526] they all run citywide.

Q. Is Doctor Spears Black? A. Yes, he is a Black educator.

Q. Are there other Blacks on the New Orleans Parish School Board? A. I don't believe there are.

Q. Was Doctor Spears endorsed by White political leaders in his campaign for the school board? A. Yes, he was; he was endorsed by White political leaders; the same gamut of support that I previously described, White and Black political, civic, and I believe by the local newspapers. He is an outstanding individual who has been involved in many, many things in the City of New Orleans and who is qualified for the position and who does live in District B, if I recall correctly.

Q. Now we have stated that he was endorsed—in talking about Judge Moriele, or Augustine, or Dr. Spears, that they were endorsed by organizations or by political leaders.

Is there a process in the political way of life in Orleans Parish, is endorsement a formal structure, is it a formal anointment, or could you characterize endorsement for us, sir, in likeness to—as to what the term means in the realities of political life in Orleans Parish? A. Well, up until a few weeks ago, which would apply to the current mayorality race taking place in the City of [527] New Orleans, it had been customary, and this was also true on a statewide basis, although predominantly in New Orleans, that an individual who qualified to run for mayor would also align himself with a group of candidates who were running for the City Council for the various parochial offices, clerk of the court, criminal sheriff, civil sheriff. We have probably fifteen positions in the City of New Orleans that

run at the same time as the mayor. And the history is that the mayorality candidate and his supporters would through some process pick what we call a ticket and they would mutually support each other. They would print a ballot which would be mailed to the voters stating "Chet Morrison endorses these various people" and to a great extent in past history, this influenced the way many people voted because if they voted for the mayorality candidate, quite often they voted for the people whom he said were going to be his team and each mayorality candidate generally get a full slate of candidates.

Quite often the same individual, such as councilman, might appear on more than one ticket. Now in the last election, I was on five, which was all the tickets, so I was very fortunate to be endorsed by all of them.

Now that system, apparently, has disappeared from the New Orleans scene because in the current elections, we don't have a ticket as such, the one that's going on right now, and apparently, there is tendency in New Orleans to [528] get away from this type of election process. In the last elections for the House and Senate, quite a few people who were endorsed by on one did get elected to the House and Senate and defeated many, many encumbents who were on tickets. It's a part of New Orleans political history which is changing and disappearing with the times, just as our political organizations have pretty much disappeared. We don't have them any more in New Orleans as we did fifty or sixty years ago, or twenty years ago.

Q. Do organizations put tickets together, or endorse candidates? A. They did.

Q. Do they at the present time? A. At the present time, I would say that there is no political organizations in New Orleans which has the ability to elect or unelect anyone. Now that may not ingratiate me with some of the local politicians, but that's my feeling.

Q. But that is not to say they no longer exist? A. You do have some relatively small organizations still in existence. But the political organizations to which you would

be referring, which existed in the days of the former-Chet Morrison who is now dead, and the former-Jim Comiskey (phonetic spelling) who is now dead, where you had two warring camps within the Democratic Party who were quite [529] strong and dominant with ward and precinct organizations. They have disappeared from the scene. There aren't anything like that any more. You might have a local group comprised of a very small number of people who interview candidates and comes out and says, "This is who we support," but they are of relatively minor import today in New Orleans. The people are voting based on what they see on television, what they read in newspapers, and what the candidate is able to convey in person. They are not blindly voting on the basis of a piece of literature that they get through the mail.

If I might say, one of the reasons for that is that we have a very strong Civil Service System in New Orleans now and the people are not beholding towards a list for jobs; you really can't control votes. People, as a result, vote the way they please, which was not true twenty, or thirty, or forty years ago.

Q. The political organizations that still exist, they endorse candidates and seek to have their support or their members support those candidates? A. Yes, that would be correct.

Q. The last time you ran, for instance, in 1969, did you have the endorsement of any such organization? A. I certainly did.

Q. How many would you say? A. Everyone in District E.

[530] Q. And how many would that be, sir? A. Well, there were mayorality candidates, five, and I was on each one of their tickets and then you had two or three organizations which claimed to have citywide support and I was on their tickets. There were several Black political organizations and I was on their ticket and I had a rather unique situation of being on just about everybody's ticket, maybe I've been a good councilman.

Q. You've indicated that there were several Black organizations in which you were on their ticket. Do you know the names of those organizations, sir? A. Yes, I could recite some of them; one of them is the Southern Organization for Unified Leadership, SOUL. I don't know whether I gave you the proper name, but I think I did; the Ninth Ward's Citizens Voters League which I have been very active with since I've been in office. There would have been several smaller organizations which represented specific neighborhoods, to tell you the names of them off-hand right now, I would know the names of their leaders, Angela Dunwatt (phonetic spelling) had an organization out in the St. Claude area, Mrs. Leotyne Luke who has been with the Ninth Ward Civic and Improvement Association some fifty years, her organization supported me. Those are the only ones I can recall off-hand.

Q. Those were Black organizations? [531] A. Yes, those are Black organizations.

Q. Why do you characterize them as Black organizations? A. Because their membership was entirely Black. They were comprised of—they were located in neighborhoods that were predominantly Black. They were organized for the purpose of trying to better the conditions of the Black residents of those neighborhoods. I think they were motivated socially and otherwise to improve the conditions of the people that they were trying to represent.

Q. Are their White organizations, political organizations, in Orleans Parish or the City of New Orleans? A. Yes, there are.

Q. And what interest did they try to secure or serve? A. You have some—well, right now there are very few left. If I had to say insofar as organized politics are concerned in New Orleans today, I would say there is more on the Black side than the White side. The RDO which was a very strong political organization for many, many years and as a citywide organization, does not have the same type of influence that it had when Huey Long was governor many, many years ago. It does not have the

same type of neighborhood orientation as would the Black organizations. You have some other, Alliance for Good Government which is a group of young men whose own interest, apparently, is to elect qualified people for public office, with no axe to grind.

[532] You have some civic associations who had branched out into doing the same thing, but the White political organizations as such have pretty much disappeared from the scene.

Q. How does one secure the endorsement of these kinds of political organizations? A. The procedure used to be that you qualified for office, put your money up to become a candidate, and then the organizations generally had meetings where they interviewed prospective candidates. They asked you your views, they knew something of your background, assessed your chances of winning or losing; if they were aligned with a mayorality candidate, try to determine whether you could help him get elected because this was quite crucial to them if they were looking for patronage in some form or other, and I'm certain there were family friendships, and other criteria that they followed. You went there with hat-in-hand, gave your speech, and hopefully, got their support if you wanted it. If you did receive it, you were quite often called upon to contribute to their expenses of printing a ballot, running an ad in the newspapers, TV commercials, et cetera.

Q. Was it expensive? A. Depending on the office that you ran for, it could be, and depending on how naive you were in politics. In the beginning it varied. As you run more, it gets less expensive [533] because you learn not to waste as much money.

Q. You indicated the last time you ran you had the endorsement of SOUL? A. That's my understanding, yes, I did.

Q. It's Black and is that the Southern Organization for Unified Leadership, I believe, is it not? A. Yes, it's located in the Ninth Ward in District E.

Q. Was their endorsement important to your bid for re-election? A. It certainly was helpful. I asked for it and was happy to receive it.

Q. Were they able to in your judgment deliver votes? A. Yes.

Q. Are the other organizations able to deliver votes?

Judge Robinson: How much more of this line of questioning, Mr. Shurtliff, do you have?

Mr. Shurtliff: Very few, Your Honor.

Judge Robinson: I think you're getting a little far afield now.

Witness: I think they all attempted to convince their constituency that I was the best candidate for the office and that they should vote for me. When you say "deliver", that's not a term, really, that I would care to use. I would like to believe that they convinced them that I had done a good job for four years in order to be in for four more years.

[534] Mr. Shurtliff: I have no further questions, Your Honor.

Judge Robinson: Very well.

Mr. Halpin: I will have no questions of this witness.

Judge Robinson: I'm sorry, I didn't hear you.

Mr. Halpin: I will have no questions of this witness.

Judge Robinson: Mr. Stoner, Mr. Treese, any redirect examination of this witness?

Mr. Stoner: May it please the Court, I would have one very brief question of the witness.

Judge Robinson: All right.

Redirect Examination

By Mr. Stoner:

Q. Councilman, you've referred to—I believe the expression was—"paved the streets for free", that you had been able to convince White voters that Black areas should have their streets "paved for free". What do you mean by that expression in the context of the system in New Orleans?

A. In New Orleans, the only method we have for paving residential streets is by a paving-lien program where the property owners are assessed. When we pave a street, they are required to pay a part of the cost of paving. This has been in effect since 1920. In all of the streets of the City of New Orleans that have been paved have been paved under that procedure. In the past four years, we were able with the assistance of urban renewal funds and model cities funds to go [535] into my district, in the lower Ninth Ward, and to pave residential streets at no cost to the abutting property owners by the City putting up ten percent of the total cost. This ten percent came from general bond funds which all of the residents of New Orleans voted on in a bond election.

So in effect, we took money from all of the citizens of the City of New Orleans and we put it into District E, even though it was ten percent, and we were able to pave the residential streets in this area at no cost to the property owners. Now we have not done this and are unable to do this in other part of the City by law. There was no public protest or outcry; there was some grumbling, but my recollection is that the Council voted unanimously for these appropriations and we are presently paving a very large number—and when I say "paving", Your Honors, I mean, subsurface drainage, concrete paving roadways and curbs, the type of streets that we don't have throughout the City of New Orleans. We still have a lot of dirt streets and a lot of streets that need to be improved without subsurface drainage. So when I'm speaking of "paving", I mean the type of street that you would find in the best residential areas in the City of New Orleans and we do not have sufficient City funds to go in and do this without assessing the property owners. We are doing this in my district and in those areas with the assistance of federal funds. We are quite happy to [536] have the federal funds because we could not have done it without it.

Mr. Stoner: Thank you. I have no further questions.

Judge Robinson: Does this complete the examination of the Councilman?

Mr. Shurtliff: I have no further questions.
Judge Robinson: May he be excused at this time?
Mr. Shurtliff: He may.
Judge Robinson: Councilman, you are excused.
Witness: Thank you.

(Witness withdrew from the stand, having been excused by the Court.)

Judge Robinson: At this point, gentlemen, the Court will stand in recess for five minutes.

(Whereupon, the Court adjourned at 3:00 p.m.)

* * * * * * * * * *

[537] LATE AFTERNOON SESSION

(The 3-Judge Court reconvened at 3:10 p.m.)

Mr. Treese: May it please the Court, in the break we have conferred on the Plaintiffs' side of the courtroom and in view of the stipulation reached this morning, we do not intend to call any other witnesses who are present today; we don't intend to call them tomorrow, either, but will rely on their testimony—deposition testimony.

We do have one more possible witness who, unfortunately will not arrive in the city until 8 o'clock tomorrow morning. It may be that at that time we will decide not to even use him in which case, our case will be closed.

Judge Robinson: In the event that you should decide to use him, we will let you reopen the Plaintiffs' case at that time.

Mr. Treese: Very well, Your Honor.

Judge Robinson: I take it that with that reservation, the Plaintiffs are resting at this time?

Mr. Treese: That is true, Your Honor.

Now one other point I'd like to make note of at present, in checking with the Court personnel, about the depositions which have been stipulated will be introduced as a joint exhibit, it appears that the Court has not received the original transcripts of all of those depositions.

Judge Robinson: That is correct.

[538] Mr. Treese: We will make inquiry as to that, we certainly have copies of all of them and will make them available to the Court as rapidly as possible.

Judge Robinson: And the Clerk is making efforts in that direction, too.

Mr. Treese: Yes, Your Honor.

Judge Robinson: Mr. Stoner.

(Both Plaintiffs' counsel conferred privately off-the-record.)

Judge Robinson: Mr. Shurtliff, will you call your first witness.

Mr. Shurtliff: May it please the Court, the Government intends as we indicated this morning to call two witnesses, live, neither one of whom are in the city at the moment. They are expected tomorrow. I apologize to the Court for not having them here. They were available at this time, but we had been unable to determine how many days into this trial after resumption we would be going with Plaintiffs' witnesses and one of our prospective witnesses is a mother of small children whom we didn't want to inconvenience her unnecessarily, if we could avoid that, and the other witness whom we intend to call is a member of the state legislature and is very busy and so we didn't want to bring him to Washington too early, and so we had expected to have them arrive this evening, neither one of whom has arrived as yet.

[539] Judge Waddy: Are either of these witnesses in the District of Columbia?

Mr. Shurtliff: Neither are, Your Honor, they are both residents of the City of New Orleans.

Judge Robinson: What is the materiality of the testimony to be given by the witness whom you referred to as the mother of small children?

Mr. Shurtliff: She is a political leader in the Black community in New Orleans.

Judge Robinson: I see, all right.

Mr. Halpin: Your Honor, if it may expedite matters, we had hoped the Court to allow the Department of Justice to put on their defense, first, and then only cover those areas that we felt were necessary, thereby shortening our case. However in—we are prepared to go forward. What we might suggest to the Court is that they allow Defendant-Intervenors to go ahead today and to call a witness, or two, and then tomorrow to allow the Plaintiffs to proceed and the Justice Department to proceed and then put on our case in major at the end of that proceeding, if that wouldn't be too confusing.

Judge Robinson: Certainly, it will not be confusing to the Court and it seems that's the most economical way from a time viewpoint to proceed.

We will let you proceed with that arrangement.

[540] Mr. Halpin: Yes, Your Honor. In that case, I would like to call Councilman DiRosa on cross-examination under the Rules.

Judge Robinson: While we are awaiting the arrival of that witness in the courtroom, I take it that the Government will be ready to proceed with any and all of its witnesses on tomorrow?

Mr. Shurtliff: That's correct, Your Honor.

Judge Robinson: Very well.

Mr. Treese: May it please the Court, I am informed that Councilman DiRosa has left. Frankly, I didn't know that he was needed this afternoon and he had an urgent matter in New York City.

Mr. Halpin: I just saw him just a moment ago.

Mr. Shurtliff: I think, Your Honor, he's trying to catch the ballgame; he's gone back to New York to try to catch the ballgame.

Judge Waddy: The ballgame isn't until eight o'clock.

(Laughter in the courtroom.)

Mr. Halpin: I didn't realize that. I did inform Mr. Stoner and Mr. Treese at the recess earlier today that I might call him . . .

Judge Robinson: Is the Councilman still here?

Mr. Stoner: I believe, Your Honor, that the Councilman has left. I do, however, have the address in New York and [541] told him that I would check with him tomorrow if Mr. Halpin intended to call him tomorrow.

Judge Robinson: Well, Mr. Halpin, I take it that you can make arrangements to let the Councilman know that you desire to call him as a witness.

Mr. Halpin: Yes, Your Honor, I thought I had informed his counsel earlier today at the break and that I would, possibly, call him; of course, I didn't know whether it would be today, or not.

Judge Robinson: With the telephone number that Mr. Stoner has, you gentlemen might get together and make arrangements for him to be on hand tomorrow. You have another witness, I take it, Mr. Halpin?

Mr. Halpin: Yes, Your Honor.

Judge Robinson: Could we then proceed?

Mr. Halpin: I'd like to call Johnny Jackson.

(Councilman DiRosa entered the courtroom at this point.)

Mr. Treese: Here he is, Your Honor.

(Laughter in the courtroom.)

Judge Robinson: Councilman, come forward.

Whereupon,

Joseph DiRosa

took the stand, and being duly sworn, was examined and testified as follows:

[542] Direct Examination

By Mr. Halpin:

Q. Could you state your name for the record, please, sir? A. My name is Joseph DiRosa (spelling out) D-i-capital-R-o-s-a.

Q. All right, Mr. DiRosa, are you presently councilman at-large in the City of New Orleans? A. Yes, I am.

Q. When were you first elected to that office? A. I was elected in 1962.

Q. And you were re-elected in 1966? A. No, in 1966, I was defeated by, I think, 268 votes out of 140 thousand, something like that.

Q. And you were elected for the second time . . . ? A. In '69.

Q. Prior to that time, did you hold any elective public office? A. No, I did not.

Q. Mr. DiRosa, could you indicate the amount of money that you spent on each of these occasions running at-large for City Councilman of New Orleans? A. I'm sorry, I didn't get the question.

Q. All right, could you state approximately how much money you spent running for at-large councilman in the City [543] of New Orleans in each of those three elections?

Mr. Stoner: Your Honor, I object to this question, I don't know the relevancy of this question.

Judge Robinson: What is the relevance?

Mr. Halpin: Your Honor, it's our position that with the long history of racial discrimination in voting and other aspects in the City of New Orleans that at-large elections particularly discriminate against Black voters who have less economic facilities for running at-large and that the at-large elections because of their additional costs is one of the factors which tends to discriminate against Blacks, and we would like to establish generally the high costs of running at-large in view of that history.

Judge Waddy: Are you suggesting that one of the defects of this plan is that is continues to permit at-large councilmen?

Mr. Halpin: Yes, sir, very definitely.

Judge Robinson: Mr. Stoner.

Mr. Stoner: Your Honor, I object to this line of questioning. I don't believe that is at issue. The only issue before this Court is whether or not a redistricting plan calling for five—this particular plan, Plan No. Two which calls for the redistricting of the City into five districts is

fair and equitable plan that applies to the Act of 1965. The at-large provision is a Charter provision of [544] the City of New Orleans and it is not before this Court.

Judge Robinson: Mr. Halpin, you only have that one question of this witness, am I correct?

Mr. Halpin: Well, Your Honor, as I understand Mr. Stoner's position . . .

Judge Robinson: Is that the only question you have on this particular issue?

Mr. Halpin: No, Your Honor.

Judge Robinson: Well, how much questioning do you have on this issue?

Mr. Halpin: The question—I'm sorry, Your Honor. On the economic question, yes; that is the only thing. I have many more questions which will go to the discriminatory nature of the at-large election and I . . .

Judge Waddy: How is that an issue in this case?

Mr. Halpin: Yes, sir, I . . .

Judge Waddy: You are attacking, as Mr. Stoner points out, a plan that has five districts; nothing is said in that plan concerning the at-large candidates—at-large councilmen. Now how do your questions that you propose now affect Plan No. Two which is before us?

Mr. Halpin: All right. It is my contention, Your Honor, that that is not all that is before this Court. It is my contention that in *United States* vs. *Georgia,* when a voting change is made, the Court must consider the entire plan. In [545] *United States* vs *Georgia,* there were some districts which remained unchanged, that is, the same configuration. The United States Supreme Court in that case found that it was proper to consider that under Section 5 of the Voting Rights Act. We would also indicate . . .

Judge Robinson: Could I intrude just a moment?

Mr. Halpin: Yes, sir.

Judge Robinson: If Judge Waddy and you, Mr. Halpin, will let me intrude for just a minute?

Mr. Halpin: Certainly.

Judge Robinson: Let me tell you what I have in mind which was behind my earlier questions to you. I think we have a legal problem here. We have witnesses present. It was my thought that if it's not going to take a great deal of time to take this evidence because, apparently, that's all that we can do with the remainder of the court day today and then you can brief and orally argue the legal questions later. Now if that arrangement is satisfactory with my colleagues and counsel . . .

Judge Corcoran: I would sustain Mr. Stoner's objection, I don't think it's relevant. We're not considering the Charter; we're considering this Plan. The Charter creates the at-large seat election.

Judge Robinson: Well, gentlemen, suppose I let you argue the question. Councilman, if you will be more [546] comfortable by resuming your seat in the courtroom, you may leave the stand at this point.

(Witness withdrew from the stand and resumed his seat in the courtroom.)

Judge Robinson: All right, Mr. Halpin, you can proceed in response to the questions . . .

Mr. Halpin: Your Honor, I would like the Court to permit the opportunity to present a brief at the end of the proceedings to detail my argument in better fashion. However, it is our position that Section 5 of the Voting Rights Act was intended to remove racially discriminatory voting procedure in certain selected southern states by the formula, of course, that's well known in the Act.

The problem that we're presented with here which the Court is raising under Section 5 is a very crucial question and it is one that I have had on other occasions in other district courts in Louisiana raised, and that is the situation that when part of a redistricting, or electoral arrangement is changed, does that trigger Section 5 of the Voting Rights Act and require then that the entire electoral arrangement then must be examined to determine whether it is racially discriminatory in purpose of effect, or does the Court simply

consider those narrow areas, which were different than they were before, in considering the racial discrimination.

I would suggest to the Court that if the Court would [547] take the latter, narrow construction of Section 5, that this would be contrary to the intention of Congress in enacting the Act. I think it would also be disastrous in terms of turning the clock back to no longer afford Black voters in those selected southern states with the Section 5 protections.

I will give you examples. Typically, for instance, in Louisiana, police juries which are similar to boards of supervisors, county governing bodies and school boards have been traditionally elected from single-member district wards. However, as towns within these parishes have grown in population, it will be frequent that in the only town, or several towns within the parish, there will be one multi-member district composed of typically, say, five or six members and then the remaining of the parish elective, say another six from districts. This was the consideration in *London* vs. *East Feliciana* in the middle district of Louisiana, as well as a number of other cases. If you would take—and the typical situation is that Blacks from the rural areas have moved into the towns within these parishes.

East Feliciana redistricted itself, as did many other parishes. If they, however, for instance, changed the number of members elective in this multi-member district from six to, say, eight in order to meet population numbers, but did not change the lines, is that a change under Section 5—you're electing, maybe, two more members—or given the next [548] situation, if the line is not changed at all, is this to be determined or should you look at the, you know, the entire effect?

Now in *United States* vs. *Georgia,* the question was raised, the identical question, relative to the, I think in this case it involved the Senate of the State of Georgia—it may have been the House of Representatives, but in any effect a 3-judge district court in Georgia determined that

this act, this redistricting act, must be submitted to the Department of Justice under Section 5. The Justice Department objected to several districts, and I can set this out in greater detail in my brief and attach the appendix of that case, if necessary, districts which had not changed their boundaries, yet the Department of Justice pursuant to Section 5 did enter objections to that, saying that we must consider the plan as a whole. The United States Supreme Court in *U.S.* vs. *Georgia* held that this type—held blankedly, of course, that the Justice Department was perfectly proper that this was a matter which was covered by Section 5. The language, of course, is not explicit; it does not go to this particular issue. But if the Court will examine the record in that case, you'll see that's exactly what the Supreme Court did, will see that that point was argued before the United States Supreme Court. So it's clearly—I would also indicate to the Court that in—there is, of course the problem of the [549] dual jurisdiction, when you start dealing with Section 5 in redistricting cases; whereas this Court has certain types of jurisdiction relative to Section 5, a Federal District Court in Louisiana might have slightly different sort of jurisdictions, and it is admittedly confusing as to where one stops and the others start.

However, I would suggest that this Court also has equity powers, that it is sitting as a District Court, Federal District Court in equity and that it would be inappropriate for this Court not to consider an obviously racially discriminatory feature of the play which is presented before it.

Note the Fifth Circuit's recent en banc decision in *Zimmer* vs. *McKeithen,* decided earlier this month, in which the Fifth Circuit found that at-large elections in the parish of each quorum were unconstitutional and impremissible. It's noteworthy for our purposes that in that case, there is technically a situation where the voting change should have been submitted to the Attorney General pursuant to Section 5, but never was and have proceeded in normal litigation in the Federal District Court in Louisiana. The

Court en banc in its opinion noted this, and said that, "We're just simply not going to be blind to this; we're not going to set up different standards under the Fourteenth Amendment than we are under Section 5.

I would suggest to this Court that even if it would [550] find that Section 5 doesn't cover the situation, that it certainly has equity power to consider the question of the constitutionality under the Fourteenth Amendment of the at-large districts. So I would suggest to the Court that this is very much within the jurisdiction of the Court; it's very much required that this Court consider that issue, as well as the issue of the narrow configuration of the districts. Also, we would consider that one must consider the total impact of the plan and where we have suggested in our opening argument that you sort of have a White quota, they have sort of two up on us, that automatically two White are elected before a Black even gets a chance to be elected under a districting arrangement, that the total effect of the plan must be determined by this Court under the proviisons of Section 5 which says, ". . . racially discriminatory in purpose or effect." It might well be that these same districts, if they were only five members might not be racially discriminatory in effect, but when you had to it two Whites, it may well be racially discriminatory in effect, in that by configuration of the districts or considerations of the electoral arrangements that Blacks are automatically excluded from full and meaningful participation in the process.

We would wish that the Court would, at least, take the position to hear our case, allow our evidence and have this proposition fully briefed.

Thank you.

[551] Judge Robinson: Very well, Mr. Halpin. Mr. Stoner.

Mr. Stoner: May it please the Court, the pleadings which have been filed in this case, both by the United States Government and by the Intervenors do not raise the issue which has been argued and presented to the Court by Mr.

Halpin. The pleadings do not attack the plan and does not mention the at-large seats.

I call the Court's attention to the Complaint which has been filed in this case, and specifically, Exhibit A to the Complaint, which is Exhibit 4 in this trial, and that exhibit, Section 3-102 is from the Charter—is a section of the Charter of the City of New Orleans. Section 3-102 is entitled, "Number and Terms of Councilmen", and is as follows:

> "The Council shall consist of seven members of whom five shall be elected from districts and two from the City at-large. The terms of Councilmen shall be four years beginning on the first Monday of May, next following their election, except that a Councilman is selected to fill a vacancy, shall serve only for the remainder of the expired term."

All right, now that provision sets up the City Charter as being a seven-man Charter—a seven-person Council. It sets two councilmen at-large and five councilmanic districts.

[552] Now I call the Court's attention to the fact that the next provision, Section 3-103 of the Charter goes on and is entitled, "Councilman Districts", and I submit that these two sections stand independent of one another. And in the latter section, the councilmanic districts are described as follows:

> "The City shall be divided into five councilmanic districts. Each district shall serve as the basis for electing a district councilman, the five districts shall be as follows . . ."

and then they refer to District A through District E.

Going then to Section 3 of that same Section, paragraph —subparagraph 3, we have the following:

> "It shall be the mandatory duty of the Council to redistrict the City by ordinance within six months after the official publication by the United States of the population of the City as enumerated in each decennial census. Each councilmanic district shall contain as nearly as possible the population factor obtained by dividing by five, the City's population as shown by the decennial census."

Now my point is this, the City Charter, itself [553] clearly deals separately with the issue of the number of the entire Council and its makeup, mainly, two at-large and five districts, and deals in a separate manner with the councilmanic districts, itself.

Now the Plan of redistricting that is before the Court is a plan that has been adopted under Section 3-103 of the Charter, and that deals only with the five councilmanic districts, and we submit to the Court that the only issue before the Court is whether or not the redistricting of the five districts as proposed in Plan No. Two is fair and equitable and complies with the Voting Rights Act of 1965. The question of the at-large councilmen is not before the Court at all. I submit again, I state again, that it has never been raised in the pleadings by, either the United States, or by the Intervenors.

Thank you.

Judge Robinson: It has not been?

Mr. Stoner: It has not been raised by the pleadings . . .

Judge Robinson: Well, you may be correct, maybe you can answer my question. I was looking at the statement for intervention. It does not seem to raise the issue, although it is my recollection that we were advised by council for the Intervenors on the very first day of trial that they intended to raise—to present this issue before the Court.

Mr. Stoner: Your Honor, I have a recollection of [554] Mr. Halpin making that issue and if the Court will recall, I believe we objected to the introduction of any evidence, or any argument with respect to that at that time.

Judge Robinson: And we did not rule on the point at the time.

Mr. Stoner: I believe the Court is correct.

Judge Corcoran: I think the record should show, too, that the Department of Justice never raised this issue, they just made their objections to the Plan.

Judge Robinson: Well, we're going to have Mr. Shurtliff make his representation at this time.

Very well, Mr. Shurtliff, you want to be heard on this?

Mr. Shurtliff: Briefly, Your Honor.

By and large, we would agree with Mr. Halpin's recital of the impact of *U.S.* v. *Georgia, Zimmer* vs. *McKeithen,* and the other cases citing the legal proposition. However, as Your Honors may recall at the time the Motion to Intervene was considered by this Panel, this question was raised and we responded that in our judgment, the issue of the two at-large members might be reached by this Court appropriately so, but that it would not be necessary in our judgment, (repeating) necessary for this Court to reach that issue.

Under the *United States* vs. *Georgia,* it is our judgment that the total package must be considered . . .

[555] Judge Robinson: The whole package?

Mr. Shurtliff: The total redistrictng package can be considered by this Court and that it is all within the purview of Section 5 and it would have been well within the powers granted by Section 5 for the Attorney-General to consider and determine on the issue of at-large at the time that it was submitted, but that as Judge Corcoran pointed out, that, in fact, was not mentioned by the Department of Justice, but that it might well have been.

Judge Robinson: Well, I don't—I'm not certain that I . . .

Mr. Shurtliff: It's a question of necessity, Your Honor, rather than a legal—in our judgment as to the legal power to do so.

Judge Robinson: What is the Court's function under Section 5 limited to in view of the scope of the decision rendered by the Attorney-General, not mentioning councilmen at-large, not posing it, rather, as an objection to the so-called Plan No. Two.

Mr. Shurtliff: The Court here is not bound, of course, by the judgments rendered by the Attorney-General in his rievew. The obligation of this Court is to determine whether or not the Plan has the purpose or effect of discriminating on account of race and color, not the correctness; indirectly, therefore, the correctness of the Department of Justice's [556] determination . . .

Judge Robinson: Excuse me, just a moment.

(The 3-Judge Panel conferred privately off-the-record.)

Judge Robinson: Go right ahead.

Mr. Shurtliff: Only in that respect does this Court indirectly examine into the Attorney-General's determination, but it makes its own determination with that respect to that question and it is our judgment that this Court could reach those issues.

Judge Robinson: Is that fair to your adversary who is not prepared to argue that point, or put on evidence concerning that point. He's built his case around the narrow issue that was raised by the Attorney-General and be brought that to this Court. Now you want to expand the pleadings and expand the proof and he's not prepared to go forward.

Mr. Shurtliff: I see no unfairness, Your Honor, in that the Plaintiffs' obligation was to persuade this Court at this time that the Plan does not have the purpose and will not have the effect . . .

Judge Corcoran: He took the Attorney-General at face value and said, "This is what's wrong . . ."—"this is what the Attorney-General said was wrong with the Plan and this s what we are prepared to argue." Now there s a new issue in the case. I think you are bound by what the Attorney-General [557] has designated as the parameters of this case.

Judge Robinson: Well, to sum it up, Mr. Halpin—I beg your pardon, not Mr. Halpin, but Mr. Shurtliff, don't leave the lectern just yet.

First thing you have is what I refer to as the scope of the Attorney-General's decision on the two submissions by

the City of New Orleans. Secondly, you have a Motion to Intervene which does not formally present that issue to the Court. The first information that the Intervenors would seek to press that issue, that I can recall receiving, was at or very near the beginning of this trial. Now we are at the point where the Plaintiffs have rested subject to a relatively minor reservation and we have the proffer by the Intervenors to put this evidence in. Now I think that fairly summarizes the situation with which the Court is confronted at this time.

If I understand the Government's position, it is that the Court is at liberty to consider this issue? Your implication is that the Court has a responsibility to consider this issue, am I correct?

Mr. Shurtliff: I'm sorry, Your Honor, I didn't catch the phrase just before . . .

Judge Robinson: I said, if I understand your position correctly, it is that the Court properly reaches the issue of the councilmen at-large and that it has a responsibility to do [558] so, is that the Government's position?

Mr. Shurtliff: Our position is that this Court can reach that issue, but that it does not necessarily have the responsibility to do so.

Judge Robinson: But that is because, as I understand, you don't think it is going to be necessary for the Court to reach it, . . .

Mr. Shurtliff: That is correct, Your Honor.

Judge Robinson: . . . the issues in the case, but we may not have to resolve it, is that correct?

Mr. Shurtliff: That is correct, Your Honor.

Judge Robinson: I'm going to raise one question to all counsel that is aside from the substantive features, it gets back to where we were about a half-hour ago, Rule 43(c) of the Federal Rules of Civil Procedure provides in—I'm going to read you the relevant part as follows:

"In an action . . ."

I'll have to read you a part that's not relevant so that you will understand the part that is relevant.

> "In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness."

[559] Then it goes on to say:

> "In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged."

What, if any, role does that provision play in the decision of the question now before us. Mr. Halpin has tendered this testimony with a request that the Court receive it and later rule on the legal questions involved. My own concern is that if the Court should rule that the evidence is not admissible and the Supreme Court disagrees, we will have to sit down and do this work over again.

Do you have a thought on the applicability of Rule 43(c), Mr. Shurtliff, and I will say to you that I am going to put this same question to counsel for the Plaintiffs and for the Intervenors?

(The 3-Judge Panel conferred privately off-the-record.)

Judge Robinson: I'm sorry, Mr. Shurtliff, go ahead.

Mr. Shurtliff: It would be my judgment, Your Honor, that the Rule in this instance would allow the taking of testimony and acceptance of the proffer and that it should be [560] taken. Consistent with our position that the Court might not need reach this issue, the evidence taken on this question need not be determinative of the Court's decision later, and in that respect, would not have to have an impact on the Court's decision here, if the Court later de-

termined that it does not want to reach the question to which that testimony is directed.

Judge Robinson: All right, sir. Mr. Stoner.

Mr. Stoner: Your Honor, do I understand that the evidence would be heard as a proffer of evidence, but that the Court would not consider the evidence until it had first reached its conclusion with respect to the law which we have argued?

Judge Robinson: That is correct, under Rule 46(c), if it is a non-jury trial which we have here, and the party proffering the testimony requests that the testimony or the evidence be taken in full, the Rule says that the Court shall do so. In terms of this case, it would preserve it, first, or further decision and possible consideration by the Court, that is, if the Court should rule that the issue is properly before it, and in any event, would preserve the testimony for purposes of appellate review.

Mr. Stoner: We understand and I believe under the Rule, it would be obligatory on the Court to take the evidence.

Judge Robinson: If the Rule applies.

Mr. Stoner: If the Rule applies.

[561] Judge Robinson: Very well. Did you have any thoughts on this, Mr. Halpin?

Mr. Halpin: Well, Your Honor, obviously, my position is that the Rule does apply and I think, also, from the point of view of efficiency when there is an appeal, that that evidence would be in the transcript and would ultimately save the Court's time.

Judge Robinson: Very well. Would you indulge the Court for just a minute.

(The 3-Judge Panel conferred privately off-the-record.)

Judge Robinson: As is apparent to you all, the Court has done a modest bit of conferring on the Bench. The Court will take under advisement the question whether the issue tendered by the Intervenors is properly before it and whether it will be the subject of evidentiary presentations.

We will endeavor, gentlemen, to give you our ruling on that question at the outset of the proceedings on tomorrow morning. On behalf of the Court, however, I will at this time announce that the Court is agreed that in the event that it should conclude that this issue is properly before it and that therefore, the Intervenors may present the evidence they tender, counsel for the Plaintiffs and counsel for the Government would be entitled to an opportunity to make evidentiary presentations of their own in connection with [562] the same issue. That would mean, of course, that the Plaintiffs would have the opportunity of reopening their case and the Government would have an opportunity to expand its presentation in each case to meet the presentations by the Intervenors.

I'm saying that to you gentlemen now for whatever benefit that it may have in the way of overnight reflection, overnight preparation, even in the way of lining up possible witnesses on that score in the meanwhile.

At this point, gentlemen, I see nothing further that we can profitably do this afternoon, so we are going to take the adjournment for today, and as I have said before, tomorrow morning, as soon as Court convenes, we will endeavor to have our ruling on this issue for you then.

I take it, gentlemen, that you have nothing further that you want to bring to the Court's attention this afternoon? Is that correct?

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[600(a)] Thursday, October 18, 1973

Washington, D.C.

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[601] The Clerk: Civil Action Number 1495-73, the case of Peter H. Beer, et al, versus The United States of America, et al. Mr. Stoner, Mr. Treese and Mr. Salatich for the plaintiff. Mr. Shurtliff and Mr. Friends for the defendant. Mr. Halpin and Mr. Cotton for the intervenors.

Judge Robinson: Are you ready to proceed?

Mr. Stoner: Ready.

Judge Robinson: Yesterday at the conclusion of the proceedings, the Court had before it an objection to evidence proffered by the intervenors with respect to the fact that two members of the seven members of the New Orleans City Council are elected at large rather than on a district basis.

The objection as the Court understands it is to the relevance of evidence on that score. The Court has concluded that the evidence may be offered at this time subject to a ruling which the Court may be called upon to make before this case is fully decided as to whether that evidence has a proper bearing on this case.

There are two principal reasons for that ruling. In the first place from the viewpoint of the Court the legal question does or does not properly bear on this case is a [602] difficult question to which the parties should have the opportunity to devote themselves in written briefs, and perhaps in oral argument, and the Court itself to devote itself to a deliberate decision on that score.

Additionally, it perhaps may be a question which the Court can better decide when it sees that evidence in relationship to all other evidence in the case.

And the second main reason is at some colloquy between the Court and counsel yesterday indicated, it would appear that under Civil Rule 43(c) the intervenors in any event are entitled to proffer the evidence in full in order that it may be preserved in the event of subsequent appellate review.

For these reasons, gentlemen, the ruling of the Court is that counsel for the intervenors may proceed, subject to the plaintiff's objections, to put the evidence in. If it becomes necessary for the Court to make legal ruling, it will do so. And subject to the further proviso as the Court indicated from the bench on yesterday in any event counsel for the plaintiffs and counsel for the Government will be permitted to introduce evidence of their own on the same question should they feel it advisable to do so.

That means, of course, that the case of the plaintiffs will be reopened for that purpose if the plaintiffs should desire to put on evidence in that regard.

[603] Now, gentlemen, it also seems to the Court, however, that it may not take nearly as much time to address evidence to this issue as the Court has been advised that it may take. There are some things about the matter of at large voting that have already been the subject of judicial decision.

At large voting was involved in Georgia versus The United States, and Perkins versus Matthews in the Supreme Court, and in City of Petersburg versus The United States in this Court, and things that are already established judicially, and things that we know certainly do not need to be belabored, so the Court will admonish that it will scrutinize the testimony that is being offered in this regard, and it will not permit counsel to go far afield.

Unless there are some questions as to what the current position of the Court is, we will move to the next stage of this case which, assuming the presence of the witnesses for the Government, will be the presentation of evidence on behalf of the Government.

Mr. Stoner, you have one witness on yesterday, I am reminded. Is that witness available now?

Mr. Stoner: Your Honor, the plaintiffs upon reflection and study over the evening have decided to rest their case in principal subject to the right to reopen as Your Honor announced from the bench with respect to the new issue which the Court will hear at proffered evidence.

[604] Thank you.

Judge Robinson: Very well. Mr. Shurtliff, you may call your first witness.

Mr. Shurtliff: If it pleases the Court, the Government would call Mrs. Cretha Haley. Mrs. Haley will be examined by Mr. Friends.

Judge Robinson: Very well. You may proceed.

Oretha Haley,

a witness called for and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Friends:

Q. State your name, please. A. Oretha Haley.

Q. For the record, will you state your race, please? A. Black.

Q. What is your address, Mrs. Haley?

Judge Corcoran: Would you ask the witness to speak up, please?

Judge Robinson: And would you do so also, counsel?

Mr. Friends: Yes, Your Honor.

Judge Robinson: Maybe you better repeat your last question.

Mr. Friends: Should I go over that?

Judge Robinson: Your last question.

[605] By Mr. Friends:

Q. Would you state your address, please? A. 1716 Agriculture Street, New Orleans, Louisiana.

Q. How long have you lived in New Orleans? A. I have lived in New Orleans since 1948.

Q. That is most of your life? A. Most of it.

Q. What is your occupation? A. I am a homemaker.

Q. Is that your full time occupation now? A. Yes, besides much of the community volunteer work that I do.

Q. What type of community volunteer work do you do? A. Well, I am involved in quite a number of community wide issues, for example, the transportation question in the City of New Orleans, the Booster Club activities, and quite a number of others.

Q. What council district do you reside in? A. I live in Councilmatic District D.

Q. Is your community involvement limited to that district? A. No, it isn't. As a matter of fact, most of the activities that I am involved in are citywide in scope.

Q. Are you a member of any civic organization? A. Yes, I belong to several.

[606] Q. Would you state those, please? A. I am a member of the Urban League of the NAACP, a founder and board member of the Sickle Cell Anemia Foundation, Stallings Playground Booster Club.

Q. Are those predominantly black organizations? A. Yes, I would say that they are basically black.

Q. What was your previous employment? A. I have been employed by Xavier University as a Community Participation Director.

I served as Program Director for the Urban League, and prior to that I worked as a community consultant for the Social Welfare Planning Council.

Q. Mrs. Haley, what is your educational background? A. I have a B.A. degree in political science from Southern University, and I have undertaken some graduate non-credit courses.

Q. Have you ever held a public office? A. No, I have never held a public office.

Q. Have you ever campaigned for a person seeking a public office? A. Yes, on numerous occasions I have campaigned for persons.

Q. What candidates were they and when? A. If I can recall—let's see, I think the first campaign I worked in was Nils Douglas who ran for the State Legislature.

[607] I worked for Charles Elloie, who also ran for the State Legislature. I worked for Ernest Cherrie and Larry Cager, who were school board candidates.

I worked for Theodore Marchand, who ran for the State Legislature. I also served as Dorothy Taylor's campaign manager when she ran for the House Seat, to name a few.

Q. Are all those candidates black? A. Yes, all of them are.

Q. You were campaign manager for Dorothy Taylor, is that right? A. Yes, I was.

Q. And what year was this? A. In 1971.

Q. Did you direct your campaign toward any particular segment of the population? A. Yes, the primary strategy of the campaign was to concentrate and direct our attention to where they considered the strength of Dorothy Taylor to be, and that was in the black community.

Q. Did that hold true for the other candidates? A. Yes, I would say that that held true for most of the other candidates.

Q. Were any of the candidates on tickets or slates with other white candidates? A. Not that I just mentioned, no. The ones that I [608] mentioned before, no, they weren't.

Q. Mrs. Haley, based on your campaign experience, is there block voting in New Orleans? A. I would say based on what I have seen of election returns, that you can very clearly see block voting being done by whites and by blacks, in New Orleans.

Q. Is that particularly evident in any election that you know of? A. One particular election that stands out in my mind was in '71 I think, or '70, when Theodore Marchand ran for the State Legislature. He won the Democratic nomination, a Republican qualified against him, and for the first time I guess in I don't know how many years, or maybe in that century, you had a Republican elected to the House from that particular area, and primarily because all of the whites voted in a block for the Republican candidate as opposed to voting for Marchand.

Q. Are you aware of the fact that three blacks were elected to citywide office in New Orleans? A. Yes, I am.

Q. How did that comport with your conclusion that there is block voting in New Orleans? A. You really would have to look at the campaigns and the candidates who won those citywide offices. For example, Israel Augustine won a citywide judgeship. The co-campaign chairman for Augustine's campaign was the then governor of [609] Louisiana, John McKeithen, and the mayor of the City of New Orleans, Moon Landrieu.

Dr. Spears also ran a citywide campaign for the school board office in New Orleans. Informally, Dr. Spears was running really as a team with a school board member who had served many years on the school board, Lord Rickner, who had been the president at one time, and in a way I guess you would say those candidates were so put together, or presented, or packaged, or to make them acceptable to the white political powers, so that their election to citywide office I would say is quite an exception, not what you would find as a general rule, that black candidates who would run, and this has been demonstrated in other elections, black candidates who have chosen to run what I would quite as independent of that kind of association in order to really be legitimate candidates have lost elections, and you can see that in several of the elections that we have had for candidates who have run for citywide office.

One that comes to my mind particularly is the candidacy of Larry Cager for the school board.

Q. The persons that you campaigned for, were they all successful? A. No, I'm afraid not. The only successful candidate I think was Dorothy Taylor, who was elected to the State House.

Q. Did she have white support? [610] A. The district that she ran from was primarily—That district was a majority black district at that time. I would say that there were—she had by way of public pronouncement received support from some whites.

Q. What whites were they? A. The only one really that comes to my mind right now is the mayor had indicated in a news conference that he supported Dorothy Taylor for the House.

Q. What was the racial makeup of Mrs. Taylor's district? A. At that time the district was about 80% black. Since that time, all of the State Legislature has been redistricted.

Q. In your working in the community, have you presented any proposal to the City Council concerning the black community? A. Down through the years I have had

the occasion to appear before or work with groups who made presentations to the City Council.

Q. Do you recall some of the issues that you presented? A. I think I initially recall appeared before the City Council around 1963 urging the Council to adopt a public accommodations law, urging the Council to adopt an equal employment opportunity ordinance as well as an open house ordinance.

On another occasion appeared before the Council concerning a proposal that was called a stop and frisk law that [611] was to be adopted.

I also appeared before the Council on the question of the location of a bridge in the metropolitan area as well as other issues, and, of course, on this redistricting question I appeared before the Council.

Q. Were any ordinances passed as a result of your appearing before the City Council? A. Not that—there wasn't one passed on the public accommodations, or the open housing, or the equal opportunity. The Council did adopt the stop and frisk law which was something that we were asking the Council not to do.

On the question of the location of tht bridge, the Council did adopt a resolution which was favorable toward the position that I held at that time.

Q. Was the public accommodations law eventually passed? A. A public accommodations law was not passed. Well, yes, one was evtntually passed in 1969, however, after I think it was twenty-four black members of the National Football League left, walked out of the City of New Orleans because of some of the treatment or incidents of discrimination that they had experienced.

New Orleans was up to get the Super Bowl Game, and I think it had been made quite clear to the City Fathers that unless the City showed some good faith effort which could be in the form of adopting a public accommodation law that the game [612] would not come to the city, and it was at that time in December of 1969 that a public accommodations law was adopted which was quite a number of years later.

Q. Did you present a proposal for expanding the City Council of New Orleans? A. Yes; yes, I did.

Q. What was that proposal?

Judge Robinson: When was it? I would like to know.

By Mr. Friends:

Q. When was it? A. It was at the time when the City Council held its first hearing on the present redistricting question. If I recall correctly that was around February I think the 16th, 1972.

Q. And what was that proposal? A. At that time we said to the City Council that the present structure that we have right now, which is a five district, two at large, is basically an inadequate structure for a city that has the population of over five hundred thousand, which New Orleans does.

We indicated at that time that when you look around the country the national trends are cities that have population of five hundred thousand or more generally have councils that range in the size from twelve to nineteen with a medium being fifteen, and that because of the basic inadequate structure of [613] the five district, two at large, that structure itself would not allow for a fair redistricting plan that would be representative of all socio economic interests in the City, and we proposed to the Council at that time given certain basic criteria that we had used that the Council adopt an eleven district plan, which we held would provide for a far more adequate and fair redistricting plan.

Q. You say "we". Are you referring to a group? A. On that particular issue there were a coalition of organizations and individuals developed to work on the issue of redistricting, and that loose coalition was called a coalition for a fair redistricting plan, so that when I say "we", I am referring to the group of the coalition.

Q. What was the racial composition of that group? A. I cannot—I cannot remember exactly how many groups were involved in it, but it was quite a large cross-section

of all of the groups in the black community, and a—there were two mixed groups as such.

It was basically an all black group with two mixed groups that had both black and white membership that were involved in it.

Q. Were there any white groups? A. Not all white groups, no.

Q. Did you campaign actively? A. I may say at that time, however, when the City [614] Council held the hearing that there were white groups who did speak and who did, you know, make a presentation, none of which really spoke in favor of the present council size at that particular hearing.

Q. Did you actively campaign for the passage of that ordinance? A. What were proposing was never enacted as an ordinance so that that was not something that we voted on.

Mr. Stoner: I object to the question, Your Honor. I don't believe it is responsive. I object to the answer. I don't believe it is responsive to the question that was asked.

Judge Robinson: Put the question again, and let's see whether the question is understood.

By Mr. Friends:

Q. Did you actively campaign for the passage of the ordinance to the City Council? A. Subsequently the City Council adopted an ordinance that would have enlarged the Council from five districts to nine districts, and two at large, and I did.

Judge Robinson: Now just a moment.

Mr. Stoner: I will object to the answer on the same grounds.

Judge Waddy: Your answer is not responsive to the question. Did you understand the question?

The Witness: I thought I was responding to the [615] question I understood, so——

Judge Robinson: Mrs. Haley, as the Court understands the question, it is did you campaign for the legislation to

which you have just made reference? You are speaking about that particular ordinance, are you not?

Mr. Friends: Yes, Your Honor.

Judge Robinson: Very well. Did you campaign for it?

The Witness: Did I campaign for the particular ordinance that I was just talking about, the eleven district that we submitted?

Judge Robinson: Yes.

The Witness: There was never such an ordinance.

Judge Waddy: The question was did you campaign for such.

The Witness: Oh, I am sorry. Yes, I am sorry, I was really understanding campaigning meaning to go and vote. I am very sorry. Yes, I did.

By Mr. Friends:

Q. Did you campaign for the passage of the ordinance to expand the City Council?

Judge Robinson: I myself suggest we may have a problem of relevance on these questions as to whether or not the witness did or did not campaign for them. What relationship does that have to the issues before the Court? [616] Mr. Friends: Your Honor, we have alleged that the referendum elections for expanding the City Council resulted in black voting by race, and Mrs. Haley is a community worker. She was active in presenting this ordinance and other ordinances to the City Council to expand, and we are alleging that whites did not support the ordinance, that it was strictly supported by blacks, and the results of the elections show that which goes to our showing that there was block voting by race.

Judge Robinson: Well, if you want to explore that, you may do so, but your question is whether the witness campaigned for this or for that.

Mr. Friends: I will strike the latter question, Your Honor.

Judge Robinson: Very well.

By Mr. Friends:

Q. Mrs. Haley, are you familiar with the redistricting plan, commonly called the Moreau Plan which is the subject of this litigation? A. Yes, I am.

Q. Does that plan meet with your approval? A. No, it doesn't.

Q. Why not? A. The plan does not, primarily because, as I indicated earlier, a five district two at large situation I feel is [617] basically inadequate and consequently results in discrimination.

Also the plan that was adopted that is presently called the Moreau Plan seems to very effectively dilute present black voting strength and the potential black voting strength that may exist in the City of New Orleans and this seemed to me as done primarily by the fact that the Council has insisted on following the ward lines, following the ward lines in the redistricting plan so that you have the lines going from north to south, and you have because of housing patterns the flow of the black population going from east to west in the City of New Orleans.

Therefore, what you have is blacks, a small number of blacks being placed in between like in the center of a larger white area on either side, so that very effectively what you do is just take a few blacks and like sit them in the center, and then you have whites on either side, and in that way whatever the potential is is certainly cut, a dilute and it is primarily because of those reasons that I just mentioned that the Moreau Plan does not meet with my approval.

Q. Based on your political activity, do you believe a black candidate could win any of the City Council seats under that plan? A. As the plan is presently drawn there may be the opportunity for the possibility of the election of one black but, as I said earlier, the plan itself is really gerrymanded [618] so as to give middle income and upper income whites a special—special advantage for election, so that it is my opinion that blacks would not have any real possibility of being elected from that particular plan.

Q. Mrs. Haley, are you a registered voter? A. Yes, I am a registered voter.

Q. Have you done your registration work? A. Yes, I have worked in the area of voter registration I would say from 1960 up through 1969.

Q. When did you become registered yourself? A. I did not become a registered voter until 1965 after the Civil Rights Voting Act was passed.

Q. Was that when you became 21? A. No, that was long after I became 21, but because again of the discriminatory practices by the Registrar of the Voters on numerous occasions, I went down to register and was turned down for one reason or another, primarily residency. I didn't have enough identification with me. So that it was not until after the passage of the Voting Rights Act that I was able finally to register.

Q. Did you have any problem getting other blacks registered? A. From 19—from—prior to 1965 there was a tremendous hard time getting other blacks registered. I continued to do this work up through '69, and up til that [619] time there was still difficulty in having blacks registered, and that is primarily blacks were being turned down because they could not prove that they lived in a certain area or certain address for a long enough period of time, or they could not prove that they were in fact who they said they were.

Q. To your knowledge, have those problems subsided now? A. It appears—It appears as though that has lessened the difficulty in persons being able to be registered. Has really lessened a great deal in the past couple of months. I would say maybe since August or so after this case was filed, and I base that on the fact that since that time the Registrar of Voters has moved around throughout the community at public meetings, and persons have been able to register and this was not done before except on some college campuses.

Q. The Registrars now come to the black community, is that your testimony? A. There have been a series of

meetings held where the Registrar of Voters has come out and said people were registered.

Q. Prior to August was the Deputy Registrar going out to the black communities? A. Not to my knowledge. There was some college registration before, and in the last election on a one- or two-day basis there was an ad hoc situation set up at the firestation, but not as open, nearly as open, as it is now, you know.

[620] Prior to the Registrar doing this, it had always been stated that it was a violation of the law, that he could not have persons come out to meetings and register people.

Mr. Friends: I have no further questions.

Judge Robinson: I beg your pardon?

Mr. Friends: I have no further questions.

Judge Robinson: Cross-examination, Mr. Stoner.

Cross-Examination

By Mr. Stoner:

Q. Mrs. Haley, I believe you testified you are a member of the NAACP? A. I hold a paid membership in that organization, yes.

Q. Is that a responsible organization in the City of New Orleans? A. Would you define "responsible" for me so that our definition will be the same?

Q. Is it an organization that commands the respect of the black community, the majority of the black community in the City of New Orleans? A. I would say historically that the NAACP has undertaken many efforts that most black people responded to historically.

Q. Now do you know whether or not that organization [621] has submitted a plan of redistricting the City of New Orleans Councilmatic District in the City of New Orleans? A. Yes.

Q. Now are you familiar with that plan? A. Yes, I am familiar with that plan.

Q. Do you agree with that plan for the redistricting of the Councilmatic Districts of the City of New Orleans? A. No, I don't agree with that plan basically for the reasons that I stated earlier. I think the plan that was proposed by the NAACP was based on—is based, rather, on five districts two at large, and I think basically that is inadequate.

Q. You believe that a plan that is composed of five districts and two at large is inadequate, is that your statement? A. That is my statement, and as long as you draw the lines north-south—It is possible perhaps to do something a little bit more fair if you draw the lines east-west, and I don't think the NAACP Plan does that.

The NAACP Plan follows the traditional ward lines as does the City's Plan. Q. Now I believe there were public hearings held in New Orleans on the question of redistricting, and I believe you testified that you attended those hearings, is that correct? A. Yes.

[622] Q. And when were those hearings held? Do you recall? A. I cannot remember all of the specific dates. I do think the first hearing was held on February 16, 1972, and there were a series of hearings from that time up until the final adoption of this particular plan.

Q. Now did you attend all the hearings, the public hearings, that were held? A. I think I attended all of them, yes.

Q. Do you recall whether or not those hearings were held prior to the referendum on the proposal to increase the Council to eleven members? A. If I recall—If I recall correctly, there were hearings held prior to and after if I recall correctly.

Q. Do you recall whether or not you attended hearings on the proposal that the Council be increased to a nine-member Council? A. I am sure I did, yes.

Q. Now would you agree that both of those plans, that is, the eleven-man proposal and the nine-man proposal was submitted to the electorate of the City of New Orleans and both plans were defeated? A. Yes, that is correct.

Q. Now after that time, after the second election, did you attend any public hearings on a proposed redistricting [623] plan? A. I think I did attend the hearings.

Q. Do you recall when that was? A. No, I don't recall when that was? A. No, I don't recall the specific dates.

Q. Do you recall whether or not you spoke at that meeting? A. I recall as best as I can recall I did not personally speak, but someone who represented the views of the fair districting group did speak.

Q. Do you recall who that was? A. I cannot recall offhand who it was. I do—I think Mr. Galvin was one of the speakers who was a member of it, Mr. Carl Galvin.

Q. Do you know whether or not the organization which you just referred to submitted a proposed plan for the redistricting of the Councilmatic District of the City of New Orleans? A. We did not submit a five district two at large councilmatic redistricting plan. However, we asked one other person who spoke to submit for us a seven district redistricting plan. This would not have expanded the Council as such in terms or enlarged its membership. It would just have been seven districts.

Q. Are you familiar with the Home Rule Charter of the City of New Orleans? [624] A. In a very limited way. I am familiar with some parts of it.

Q. I am referring specifically to the Home Rule Charter provisions with respect to the Council of the City of New Orleans. A. I have read it. I am not sure I can recall all of it in detail.

Q. Are you aware that that charter provision is a provision that calls for two at large council seats and five district councilmatic seats? A. Yes, the charter does that.

Q. Now, Miss Taylor—— A. My name is Haley.

Judge Robinson: Just a moment.

By Mr. Stoner:

Q. Mrs. Haley, did you participate in the campaign of Judge Morial, the successful campaign of Judge Morial when he was elected on a citywide basis? A. To which seat are you referring, sir?

Q. I am referring to the most recent election when he was elected to the Court. A. If I recall correctly, when

Judge Morial was elected to the Court of Appeals, his most recent election, the candidate that was running against him due to illness or some other reason withdraw, and he was automatically elected.

[625] Q. Did you participate in that campaign? A. If I recall correctly, there was no, you know, there wasn't a campaign because his opponent withdrew.

Q. Well, prior to the time the opponent withdrew, did you participate in the campaign? A. I was not very active in it. I may have. I think I did some telephoning for Judge Morial.

Q. Did you support Judge Morial? A. You are talking about in the Court of Appeals race?

Q. Yes. A. As I said before, if I recall correctly the opponent that Judge Morial was running against withdrew and he was the only candidate left in the race.

Q. Now did I understand you to say you made some telephone calls? What was the nature of those telephone calls? A. Prior to—At one point there was some activity on the part of Judge Morial and, you know, for his candidacy, prior to the person withdrawing, and it would have been urging persons to vote for him on his behalf.

Q. Now how about the most recent election of Judge Augustine? Did you participate in that election? A. I did a little work in the campaign headquarters during that election, not very much, but a little bit.

[626] Q. Were you supporting the candidacy of Judge Augustine? A. Yes.

Q. How about the election of Dr. Spears to the School Board? Did you participate in that election? A. I primarily made financial contribution to that election.

Q. You did not campaign for Dr. Spears or—— A. Others to vote for him. Not actively.

Q. Do you know how many persons were running in that election for the School Board? A. I cannot recall offhand, but I think it was several persons.

Q. And do you know how many elective position were at stake in that election? A. I think it was two, but I am not positive.

Q. And there were two positions? A. I am not positive of that.

Q. You don't recall the number of—— A. I don't recall, no.

Q. You don't recall the number of candidates. Do you recall whether or not you supported any other candidates for the two positions or a person other than Dr. Spears? A. Charles Elloie.

Q. Was he successful? [627] A. No.

Q. Now, Mrs. Haley, could you tell us in what part of the city do you live, and you may refer to a councilmatic district if you know. A. Okay. I live in Councilmatic District D.

Q. D? A. D.

Q. And were the campaigns that you were connected with or active in primarily in that area of the city, or were they citywide campaigns, or were they in other areas of the City of New Orleans? A. They—No, they were not primarily in that Councilmatic District. They were in other districts as well as citywide for the most part.

Q. Have you ever supported a candidates for a councilmatic district seat in District D? A. I voted. No, no, no, because I was not living in the District D in the last councilmatic election.

Q. Did you support a candidate in any other district in the City of New Orleans? A. In the last city election I did some work for a candidate who was running for District B, a black candidate who was running.

Q. When you say the "last", you mean the '67 election? [628] A. Yes.

Q. I believe you testified that you first registered as a voter in 1965. A. Yes, it was. I just can recall it was after the Voting Rights Act passed some time.

Q. And when prior to that time had you attempted to to register as a voter? A. Oh, I cannot recall the specific dates, but on numerous occasions. As I testified earlier, I was involved during that prior to '65 periodically at voter registration work, so I had the occasion to be in the Regis-

tration Office quite often, and just periodically I would go and try again.

Q. And where did you attempt to register? A. In the Registrar of Voter's Office in the City Hall, New Orleans.

Q. And do I understand you urged other people to also register? A. Yes.

Q. And your testimony is that you were denied the opportunity of registering prior to 1965? A. That is correct.

Q. And how many times was that that you attempted to register? A. I can't recall offhand, but it was several times.

Q. You don't recall with any reasonable certainty [629] the approximate dates of that attempt? A. No. As I said before, I was involved in voter registration work and found myself having to go to the Registrar's office a number of, you know, quite often, so every other week I would go in and see, well, if I could make it this time.

Q. Now did any of the persons whom you urged to register, did any of them register, in fact? A. Prior to 1965, occasionally, yes, some persons did get registered, yes, but nowhere near proportionately the number of people that were brought to the Registrar's Office.

Q. Now did I understand you to say that since 1969 you have not been active in Voter Registration? A. I have not done intensive work in Voter Registration as I had done before like, you know, going out and knocking door to door urging people to go register.

Q. Now are you familiar with the present registration procedure in the City of New Orleans? A. I think I am.

Q. And are you aware that the Voter Registrar sends representatives into various sections of the City of New Orleans to facilitate registration? A. As I indicated earlier in response to a question that this is a recent practice. I am familiar with that, and this is a recent practice.

[630] Q. And when did you first become aware of that procedure? A. A few months ago when—It was a wide, you know, a widespread basis. Prior to that Registrar of Voters had sent deputies out to various college campuses, but it was not widespread as it is now.

Q. Now you referred to the Marchand election I believe. What position was that that Mr. Marchand was running for? A. Mr. Marchand was running for a position in the State House.

Q. The State House of Representatives? A. The State House of Representatives, yes.

Q. And when was that? A. If I recall correctly it was either '70 or '71. I think maybe the last part of '70.

Q. And what area of the City did the district from which Mr. Marchand was runnng, what area of the City was that located in? A. Ward nine.

Q. Yes. A. Which is Councilmatic District E.

Q. And did it comprise the entire ward? Was that his whole district? A. The entire ward at that time. The District has since changed, the entire nine ward, and a few precincts in [631] Ward Eight.

Q. And was Mr. Marchand the Democratic nominee? A. Yes, he was.

Q. How many persons had run against him in the primary? Do you recall? A. I cannot recall the exact number. I am sure it was three or more.

Q. Do you recall whether or not Mr. Marchand had ever previously run for public office? A. Not that I can recall offhand.

Q. How old a man was he? A. I assume he was in the early thirties.

Q. And what was his business, or professional or personal life experience at the time he ran for office? A. By occupation I think Marchand is a building contractor, and by experience or whatever—He had been very active in community and political activities in the Ninth Ward over a period of years.

Q. Do you know his educational background at all? A. No, I cannot recall accurately what his educational background was.

Q. What cities in the United States of a comparable population to the City of New Orleans have a city council in excess of—— A. Okay, I think I may have that.

[632] Judge Robinson: Just a moment. Let's finish the question.

Q. In excess of seven members?

Judge Robinson: Do you understand the question, Mrs. Haley?

The Witness: Would you repeat it, please, to make sure?

By Mr. Stoner:

Q. What cities in the United States of a population of more than five hundred thousand have city councils elected with more than seven members? A. If I can recall offhand. Let's see, that have in excess of seven. St. Louis, Memphis, Pittsburgh, I believe, San Francisco. I do have a listing of them. I thought I had it here with me. I have it here in the courtroom but I can give you several of them, but I am sure those do have populations of five hundred thousand or more.

According to the reference book, "Municipal Governments", there is only one other city that was surveyed in the country with a populaton of five hundred thousand or over that has a council as small as the City of New Orleans, and I think that is Columbus, Ohio.

However, all of those members are elected at large.

[633] Q. Do you know Mr. Nils Douglas? A. Yes, I do.

Q. Have you ever been active in any of his campaigns for public office? A. Yes, Mr. Douglas ran twice for the State House of Representatives seat and I was active in his campaign each one of those times. I think that was '63 and '66.

Q. Is it true that Mr. Douglas is the chairman of the SOUL organization, the organization on SOUL, the southern organization for—— A. Presently I think—I believe he is chairman of the Southern Organization for Unified Leadership, which is called SOUL.

Q. And you are a member of that organization? A. No, I am not.

Q. But you have been active in his political campaigns? A. Yes, and I just might add that in both of those races, Mr. Douglas ran prior to the organization of SOUL.

Q. Let me ask you this. Do you know when Mr. Douglas first ran for public office? A. I am not positive, but I think it was '63. It was around that time.

Q. Do you know whether or not the organization was in existence at that time? [637] A. No, it was not. SOUL was not organized until the late '60s. It may have been '68, and I think Mr. Douglas ran in 1963 and 1966 for the House Seat.

Q. Are you aware of the fact that the organization that is now known as SOUL had been in existence a number of years prior to 1968, although not in an incorporated capacity? A. To my knowledge, SOUL did not exist in those earlier years.

Q. Now has that organization taken positions. political positions, on citywide issues in the City of New Orleans? A. I am not a member of that organization, and I think that it probably has, but I would not have all of that knowledge on the top of my head.

Q. But you are familiar with the organization? A. Yes.

Q. And is it an organization of small membership, or large membership, or what it its support in the City of New Orleans? A. I really don't have any idea what the actual membership is that makes up the organization. The organization primarily in the past has functioned in what is called the Ninth Ward, you know, the Ninth Ward of the City, or there again what would be Councilmatic District E, but I don't have any idea about the membership.

[635] Q. But it has been a regional organization within the City of New Orleans?

Judge Robinson: I beg your pardon. It has been a what?

Mr. Stoner: A regional organization.

Judge Robinson: Regional organization?

By Mr. Stoner:

Q. A regional organization within the City of New Orleans. A. In the past as far as its concentration on candidates, for the most part it has been. However, SOUL has endorsed and supported citywide candidates like for mayor and various other things, but I think I would say it has been regionally based.

Q. Do you know whether or not SOUL took a position on the redistricting plans that have been offered? A. I do know that in the early part of the redistricting question SOUL took a position supportive of the adoption of an eleven district plan.

Q. Do you know whether or not it took any position following the two referendum elections with respect to the redistricting plan? A. I don't know if it—I am sure it did take a position on the last—You said after the referendums?

Q. After the two referendums, yes. [636] A. I really don't know.

Mr. Stoner: I have no further questions.

Judge Robinson: Any questions, Mr. Halpin?

Mr. Halpin: I would like to ask——

Judge Robinson: Very well.

By Mr. Halpin:

Q. Mrs. Haley, you testified as to the general difficulty prior to 1965 in registering black people. Could you just very briefly mention other areas of racial discrimination during that period, particularly in regard to the schools, and public facilities?

Mr. Stoner: Your Honor, I object to this question.

Judge Robinson: On what basis?

Mr. Stoner: I don't know that it is relevant to the issues. He is referring to periods prior to 1965, I believe.

Judge Robinson: What is your period, Mrs. Haley.

The Witness: I was referring prior to 1965 in this question. I can be more specific.

Judge Robinson: The objection is overruled. Restate the question however for the benefit of the witness.

By Mr. Halpin:

Q. Could you state, Mrs. Haley, are you generally familiar with facets of life and culture in New Orleans? [637] A. To some degree I am, yes.

Q. Could you state whether the public schools in New Orleans were segregated by race, and, if so, until about what time. A. Yes, the public schools were segregated by race until there was a court decision I think Bush versus the State of Louisiana, which was around I think about '61.

The schools were legally segregated. Many schools, however, which were based on the neighborhood concept, and those that followed housing patterns today still remain segregated. That is one of the questions the school board is presently, you know, engaging in.

Q. Have public facilities been segregated in New Orleans, and, if so, please state at what time. A. Yes, public facilities, you know, just in public places segregated, but even within the city hall there were signs for blacks at water fountains, at rest rooms, and in the cafeteria that was located in the City Hall. Blacks could not even be served there.

Q. Now you indicated you only registered to vote after passage of the 1965 Voting Rights Act. A. Yes.

Q. Could you give me a general idea of the increase [638] of black voting registration in the period immediately following the passage of the Voting Rights Act? A. I think prior to the Voting Rights Act, the black registration stayed somewhere around about thirty thousand.

You know, for years and years there was never that much of an increase. Stayed around that.

However, immediately after the passage of the Voting Rights Act, registration increased tremendously until today I think we are somewhere around eighty-some thousand.

Q. You mentioned in discussing the political organization SOUL that that organization generally started around

the late sixties. Was there any coincidence in terms of time of forming black political organizations and increase in black voting registration which you mentioned? A. It is my opinion that there is some correlation because prior to the adoption of the Voting Rights Act black registration was never able to become high enough to really be very significant, particularly in influencing political elections, so with the onset of increased volunteer registration after 1965 you naturally had the formation of political organization by blacks.

Q. From your experience in the campaigns that you mentioned for black candidates, could you generally describe the effect that this history of past discrimination that you have just testified to had upon the campaigning and political [639] strategy, and so forth of black candidates?

Judge Robinson: Just a moment.

Mr. Stoner: I object to the question, Your Honor.

Judge Robinson: The objection is overruled. This is the same consideration that we had before. Do you have the question, Mrs. Haley?

The Witness: I am not sure if I do.

Judge Robinson: If you would repeat it, please. Restate the question.

By Mr. Halpin:

Q. I will rephrase it also.

Given your experience of campaigning for black candidates, could you generally discuss the effect that this history of discrimination in New Orleans had upon black political organizations electing black officials in New Orleans? A. If I understand you question correctly, I would say that the effect that it has had in terms of attitude, in terms of the way the voting has taken place, suggests rather very strongly I would say that black candidates who do run for public office if they are running in any campaign would best address their campaign to where they consider their strength to be and just based on what has happened in the past, that would be to the black community.

Also, candidates who are interested in running citywide races, would really best have to make themselves accep-
[640] table to the white powers that be if they were interested in winning. I am not sure that answers your question.

Q. Particularly are you familiar with the majority requirement, that is, the requirement under the Louisiana Law which requires a candidate to receive a majority of votes rather than a mere plurality in order to win an election? A. Slightly, I am somewhat familiar with it.

Q. Could you discuss the general effect that that has upon candidates, black candidates in running?

Judge Robinson: Just a moment.

Mr. Stoner: Your Honor——

Judge Robinson: Just a moment. All right, now Mr. Stoner, do you have an objection?

Mr. Stoner: Yes, I object to the form of the question. Mr. Halpin has asked——

Judge Robinson: To the form of the question?

Mr. Stone: He refers to an item of Louisiana Law that requires a majority, and I don't know that we have any evidence on that in the case, and furthermore, I don't know what relevance it has.

Mr. Halpin: Well, I intend to ask the Court to take judicial notice of this statute as well as some other statutes of Louisiana.

My question, however, simply goes to whether the witness is generally aware of that feature.
[641] Judge Robinson: Well, you may ask that, but it only takes one question to answer that.

By Mr. Halpin:

Q. All right, and secondly, I would say which types of elections? Is it generally elections——

Judge Robinson: I am sorry, gentlemen, but I can't help you because I am not familiar with the statute. Let's reframe the question, Mr. Halpin.

Mr. Halpin: Okay.

By Mr. Halpin:

Q. Mrs. Haley——

Judge Robinson: Pardon me, do not answer the question until you are instructed to do so, Mrs. Haley.

The Witness: All right.

By Mr. Halpin:

Q. Mrs. Haley, are you generally familiar with the requirement for a candidate requiring a majority of the votes in order to be elected in certain elections in Louisiana?

Judge Robinson: You may answer.

The Witness: I am familiar with that to some degree. As you were asking the question, what came to my mind is, for example, in the councilmatic races, we have two sets, and in order for a candidate to win, you know, he has to have that plurality which means that you have to vote for two candidates in order for your vote to count, and that winds up working [642] against—If a black is running, for every vote he gets, the white gets two.

Q. All right. Is what you are referring to there the anti-single shot law? A. I guess so.

Q. Just for clarification, generally given your knowledge that you may have of the election structure, what effect is any does the history of past discrimination that you mentioned have upon the campaigning of black candidates?

Mr. Stoner: The same objection, Your Honor.

Judge Robinson: The objection is overruled. You may answer the question.

The Witness: I am really not sure I understand.

Judge Corcoran: I don't think I understand it either. Would you rephrase it?

By Mr. Halpin:

Q. Well, it may well be—In terms of the past voter discrimination in particular that you referred to, could you mention what effect if any that history presently has upon the campaigns of black candidates, particularly in regard to the election laws that you just mentioned?

Judge Robinson: Just a moment, Mrs. Haley.

Judge Corcoran: It doesn't make any sense to me at all. Can you relate it to the case at hand?

Judge Robinson: I think your question is about to be withdrawn.

[643] Mr. Halpin: I will withdraw the question, and pursue it with another witness.

Judge Robinson: Go on to your next question.

Mr. Halpin: I have no further questions then.

Judge Robinson: All right. Is there any redirect examination, Mr. Friends?

Mr. Friends: We have no further questions now.

Judge Waddy: Do you have another questions?

Mr. Stoner: I just have one or two very short questions.

Judge Robinson: By all means, go ahead.

By Mr. Stoner:

Q. Mrs. Haley, do you really hold a position in the City Government of the City of New Orleans? A. I do hold a position.

Q. Do you hold any position of any kind connected with the City Government of the City of New Orleans? A. I do not hold an elected position.

Q. Any appointive position? A. I do hold a position as a Board Member for a public corporation called New Towns, the New Community.

Q. The New Town Development Corporation? A. Right.

Q. And were you appointed to that position? A. Yes, I was appointed to that position.

[644] Q. And by whom? A. The procedure is for the mayor to make the appointment, so I was appointed by the mayor.

Q. And how long have you served in that capacity? A. The Board activated sometime I think around April or May of—this is '73.

Q. And you have served since that time? A. Yes, I have.

Q. And is that a quasi public corporation? Do you know? A. Yes.

Q. And have you ever held any other appointed positions in the City of New Orleans? A. Not that I can recall offhand . . . appointed, connected with city government?

Q. Yes. A. No.

Q. I believe you referred to the schools of the City of New Orleans. Are the schools in the City of New Orleans under the jurisdiction of the City Council or of the Mayor of the City of New Orleans? A. The School Board is under the jurisdiction of an elected School Board.

Q. Are the schools funded by a City Council or administered by the City Council of the City of New Orleans in any respect? [645-670] A. No, they are not administered by the City Council.

Mr. Stoner: I have no further questions, I have no further questions.

Judge Robinson: Are you all finished, gentlemen, with this witness?

(No response.)

Judge Robinson: I take it she may be excused from this trial at this point.

Mrs. Haley, you are, of course, welcome to remain, but you are also free to leave at any time.

The Witness: Thank you.

Judge Robinson: At this point the Court will stand in recess for ten minutes.

The Marshal: All rise. This Honorable Court will stand in recess until return of court.

(Whereupon the Court was recessed for ten minutes.)

[671] [Following recess:]

Judge Robinson: You may call your next witness, Mr. Shurtliff.

Mr. Shurtliff: Mrs. Haley will be the only live witness that we will present at this time. The two other Government witnesses were deposed and their depositions will be offered.

Judge Robinson: All right.

Mr. Shurtliff: At this time, Your Honor, may I offer our documentary evidence?

Judge Robinson: Very well.

Mr. Shurtliff: Pursuant to stipulation with counsel for plaintiffs, United States Exhibit 1, which is a map of the city showing the voters by colored dots groups has been stipulated to.

Government Exhibit No. 2, an acetate overlay and statistics of the current plan has been stipulated to.

Exhibit No. 3 is an acetate overlay and statistics of the Monroe Plan proposed January 13, 1972, has been stipulated to.

Exhibit No. 4, an acetate overlay and statistics of plan in ordinance 4796 has been stipulated to.

Exhibit No. 5, an acetate overlay and statistics, a plan in ordinance 5154 has been stipulated to.

Exhibit No. 6, an acetate overlay and statistics [672] and plan proposed by the NAACP have been stipulated to.

Exhibit No. 7, an acetate overlay and statistics of plan proposed by the Republican Party in Orleans Parish, has been stipulated to.

Exhibit No. 8, contains various newspaper articles dealing with the question of redistricting in the City of New Orleans, that has been stipulated too.

Exhibits No. 9, 10, 11, 12, and 13, have been withdrawn.

Exhibit No. 14 is a list of registered voters by precinct numbers as of April 1972. That has been stipulated to.

Exhibit No. 15, a letter from John A. Echert, an employee of the City Council Research Staff to an attorney with the Department of Justice, dated December 11, 1972, setting out the residence of incumbent councilmen has been stipulated to.

Exhibit No. 16, a transcript of public hearings held by the city council on February 16 and 17, 1972, on the question of redistricting has been stipulated to.

Exhibit No. 17 has been withdrawn.

Exhibit No. 18, a summary of the city councilmen I think held on April 19, 1973, has been stipulated to.

Exhibit No. 19 has been withdrawn.

Exhibit No. 20, a memorandum to the city council from the NAACP January 20, 1972, setting out a [673] redistricting plan proposed by the NAACP has been stipulated to.

Exhibit No. 21, a letter to the city council from the Republican Political Action Committee dated April 18, 1972, setting forth a proposed redistricting plan, has been stipulated to.

Exhibit No. 22, a copy of an ordinance calendar No. 5194 introduced by Councilman Monroe, January 13, 1972, has been stipulated to.

Exhibit No. 23, the transcript of the deposition of Gregory Smith taken by the United States, has been stipulated to.

Exhibit No. 24, the transcript of the deposition of Mr. James Pezant has been stipulated to.

Exhibit No. 25, the transcript of the deposition of Mr. John A. Echert has been stipulated to.

Exhibit No. 26, a compilation of statistics from Defendant's Exhibit 2 to 7 has been stipulated to.

Exhibit No. 27, guidelines for the enforcement of the Voting Rights Act of 1965 has, I believe, been previously admitted, and if not, it has been stipulated to.

Exhibit No. 28, the returns of an election by precinct for the November 3, 1970 Schoolboard Election has been stipulated to.

Exhibit No. 29, the returns for elections conducted November 6, 1965, and December 11, 1965, in the Democratic [674] Primary has been stipulated to.

Exhibit No. 30, the returns for Democratic Primaries held on November 8, 1969 and December 13, 1969 have been stipulated to.

Exhibit No. 31, a publication entitled Wards of New Orleans, published by the Bureau of Governmental Research, 822 Perdiddo Street, New Orleans, Louisiana, has not been stipulated to.

Judge Robinson: And that is what number?

Mr. Shurtliff: No. 31.

Judge Waddy: Are you proffering it?

Mr. Shurtliff: I am proffering it, Your Honor.

Judge Corcoran: What is it again?

Mr. Shurtliff: It is a publication entitled Wards of New Orleans.

Exhibit No. 32, returns of election of March 20, 1973, on a proposed charter amendment has been stipulated to.

Exhibit No. 33, returns of an election conducted November 7, 1972, on a proposed charter amendment have been stipulated to.

That concludes the documentary evidence offered by the Government with the exception of Exhibit No. 31, and that [675] has been previously agreed on and stipulated to by counsel.

Judge Robinson: I would like to take and inventory on this. The last exhibit number stipulated to is what, Mr. Shurtliff.

Mr. Shurtliff: Thirty-four, Your Honor.

Judge Robinson: New, according to my notes, you are proffering at this time a series of exhibits numbered 1 through 34, with the exception of withdrawn exhibits which are Nos. 9, 10, 11, 12, 13, 17 and 19, and with the possible exception of No. 27, which may already be in, otherwise you are moving its admission at this time, and lastly with the exception of No. 31, which is not stipulated to; is that correct?

Mr. Shurtliff: That is correct, Your Honor.

Judge Robinson: You mentioned a stipulation in regard to those I have mentioned, not the exceptions, of course, between the Government and the plaintiff.

Are the Intervenors a party to that stipulation?

Mr. Halpin: Yes, Your Honor, we will agree with the stipulation.

Judge Robinson: I take it there is nothing further the Court needs from counsel in order to admit these exhibits into evidence?

They will be received.

[676] [Exhibits just before referred to were received in evidence.]

Judge Robinson: Now, did you have any further presentation that you wished to make to the Court with reference to Exhibit No. 31?

Mr. Shurtliff: I would proffer at this time, Your Honor, I took up the question of the stipulation with counsel for plaintiffs, they would not agree to stipulate its admission. I do not know the grounds. However, I would proffer it.

Judge Robinson: Very will.

First, Mr. Treese, let me ask you this: You didn't stipulate to it. Do you object to it?

Mr. Treese: Yes, Your Honor, we do.

Judge Robinson: What is the basis of the objection?

Mr. Treese: The basis of the objection is we were first confronted with the possibility of this document as evidence late yesterday after. We would prefer to confront the author of the document because there are many opinions stated throughout the document.

Secondly, there are many notations, the author of whom we do not know, throughout the entire document, which I feel would be quite self-serving to the Government's case.

Judge Robinson: Is the author of the document present in attendance here?

Mr. Treese: No, Your Honor.

[677] Judge Robinson: Where is he or she, Mr. Shurtliff?

Mr. Shurtliff: Your Honor, we do not know the name of the author of the publication. The preamble to the publication indicates that it is a publication of the Bureau of Governmental Research of the City of New Orleans.

There is no listing of an author. We have had previous testimony from Counselman Beer as to what the Bureau of Governmental Research is in New Orleans.

Judge Waddy: That is a question I wanted to ask you. Do you know whether this is an official body of the city?

Mr. Shurtliff: It is not, Your Honor. It is a quasi-public organization devoted to the study of government, and governmental agencies, the function in the city. It has performed on various occasions numerous functions. Councilman Beer testified that the Bureau of Governmental Research Staff, for instance in the development of statistics for the City of New Orleans from the 1970 Census.

As to the question of the authenticity of the document, we would submit——

Judge Robinson: First, you would help me, Mr. Shurtliff, if you tell me what purpose you expect to be served by getting it into evidence.

Mr. Shurtliff: We believe, Your Honor, that the [678] publication will be of some service to the Court and to the parties in that it sets out a history of the development of wards in New Orleans, and has been the subject of some testimony at the hearing here.

Judge Robinson: Is this a published document, published in any shape or form?

Mr. Shurtliff: It is, Your Honor.

Judge Robinson: Where is the document?

Mr. Shurtliff: This is the copy that I had marked.

Judge Waddy: Is the objection to the authenticity or to the relevance?

Mr. Treese: It is not the best evidence, Your Honor. That is basically it. We have not had an opportunity to confront the author of the document. It was just placed in front of us yesterday for the first time. As I have also indicated, there are these handwritten notations throughout the document.

Judge Robinson: Well, I am going to try to clear that up with counsel.

Mr. Treese: I will skip over that. My objection to the document is we have no opportunity to cross-examine the author as to opinions and other statements throughout the document.

Judge Robinson: Are you separating now—I thought you did earlier—the statements that purport to be a [679] fact

and the opinions including the handwritten notations that you made reference to?

Mr. Treese: I will separate those two. Your Honor said you would take care of it.

Judge Robinson: Are you objecting to the factual content of the document as distinguished from statements in it?

Mr. Treese: Quite frankly, Your Honor, as you can see, it is voluminous. I haven't had an opportunity to check that with the research staff of the city council.

Judge Robinson: Why don't we pass that over, gentlemen, and give counsel that opportunity. It is a reasonable request. He is confronted with these materials, as I understand it, late on yesterday.

Mr. Shurtliff: I have no objection to that, Your Honor. However, I do believe that we provided a copy of this publication for counsel.

Judge Robinson: You have?

Mr. Shurtliff: At the earlier hearing on this matter. We did not ask them to stipulate to it, but it is my understanding that they have had a copy of the publication for some time.

Judge Robinson: Certainly it is not crucial to the Government's presentation that the Court rule on this at the present time.

Mr. Shurtliff: It is not.

[680] Judge Robinson: All right. We will indulge you then and you have the opportunity, Mr. Treese, we will make a ruling before the hearing closes.

Are you certain now, you do not have these materials? If you are certain that you don't have them, you may borrow these.

Mr. Treese: No, I have that document.

Judge Robinson: Oh, do you?

Mr. Treese: I have that document, with the same handwritten notations, I don't know who made those.

Judge Robinson: Well, let me clear that up. Are you moving the document in with or without the notations that are it?

Mr. Shurtliff: Without.

Judge Robinson: So that would eliminate the notations?

Mr. Treese: I would prefer a clean document.

Judge Robinson: What about statements of opinion?

Mr. Shurtliff: We would prefer it without statement of opinion.

Judge Robinson: Just the factual materials.

Mr. Shurtliff: Your Honor, we believe the factual materials would save research time because it was traceable to the original source. For instance, it says in 1912 charter, it set out that if there is any question as to the veracity of [681] that statement the 1912 charter could be checked, but it is a good reference material is why we offer it.

Judge Robinson: All right, gentlemen. I think the problem is defined, as I have said.

Judge Waddy: Let me ask you one question, Mr. Shurtliff. Is it the type of document that the Court, if it were writing an opinion, could have access to in support of its position?

Mr. Shurtliff: I believe that it is, Your Honor.

Judge Robinson: That would be on the basis of publication?

Mr. Shurtliff: Publication.

Judge Robinson: Why don't you gentlemen try to get together and give us some information when we resume on this question as to how widespread the distribution of this document was. It seems to me the question of admissibility could be affected by that among other considerations.

Mr. Shurtliff: Very well, Your Honor.

Judge Robinson: Very well.

It take it that the Government rests, does it, at this point?

Mr. Shurtliff: We rest at this point, Your Honor.

Judge Robinson: Very well. Counsel for the intervenors may proceed.

Mr. Halpin: We would like to call as our first [682] witness Johnny Jackson, Jr.

Thereupon,

Johnny Jackson, Jr.

sworn, was examined and testified as folows:

Direct Examination

By Mr. Halpin:

Q. Could you state your name for the record, please? A. My name is Johnny Jackson, Jr.

Judge Waddy: Jackson?

The Witness: Jackson.

By Mr. Halpin:

Q. And are you an elected official, Mr. Jackson? A. Yes, I am. I am a state representative from District 101 from Orleans Parish.

Q. And when were you elected to that position? A. In, I believe, '72.

Q. And for the record, your race is black? A. I am black.

Q. Prior to that time did you hold any elected political office? A. No, I did not.

Q. Have you ever run for political office prior to that time? A. Prior to that time I neither ran for office nor [683] held any elective office.

Q. Prior to that time had you been active in campaigning for other candidates in general? A. On numerous occasions.

Judge Waddy: I believe you have your mouth a little too close to the microphone.

By Mr. Halpin:

Q. All right. Are you a registered voter? A. Yes, I am.

Q. When did you first register to vote? A. I believe it was in 1966 or '67, something like that.

Q. And did you conduct any activities relative to voter registration for black citizens? A. Yes. On several occasions prior to '65 and after '65, after the Voting Rights Bill, we did conduct several voter registration campaigns.

Q. Have black people ever had any difficulty to register to vote in Orleans? A. Yes, they have.

Q. Could you generally describe some of those difficulties? A. Well, I remember a time when you used to gather people, bring them down to the city hall where they only have one station, and people were being turned away for lack of evidence of living in the district, a certain period of time, [684] not having enough information, having receipts that showed that they rent but those receipts not being validated by the landlord, something like that.

Q. Are you generally familiar with the segregation or desegregation of the Orleans Parish Schools?

Mr. Treese: May it please the Court: that calls for an assumption, it is also a leading question. I would object to it.

Judge Robinson: I don't know that it was leading, but it certainly can be reframed.

Reframe the question.

Mr. Halpin: I will reframe it.

Judge Robinson: Mr. Jackson do not answer the question until we determine whether it should be answered or not.

By Mr. Halpin:

Q. Are you familiar—to your knowledge, has there been any racial segregation in the schools of New Orleans, and if so, in what times and what is your knowledge about that?

Mr. Treese: I do think that is leading, Your Honor, and I would object to it.

Judge Robinson: Well, I wouldn't think it is suggestive of an answer. Your objection is only to the question of form?

Mr. Treese: That's right.

[685] Judge Robinson: Objection will be overruled.

You may answer.

Do you understand the question?

The Witness: Can you just rephrase it, Judge, at least say it over again for me?

By Mr. Halpin:

Q. All right. Could you generally state what you know relative to the segregation or desegregation of public schools? A. Well, I lived in New Orleans all my life and for all my life—I am 30 years of age now—that prior to the Supreme Court's decision rendering segregation of schools unconstitutional, that our schools were totally segregated.

After that decision and even to the present date the population of our schoolboard, of our school system, is approximately 80 percent black and to a large degree is still segregated.

At athletic activities, I remember just recently, in the early 60's, one school was—schools began to participate in integrated activities.

Judge Robinson: Just a minute, Mr. Halpin.

Mr. Jackson, could I ask you to lean back off the microphone just a little? If it doesn't pick up your voice, we will let you know. We are having a little trouble understanding you.

The Witness: All right.

[686] Judge Robinson: Very well, you may proceed, Mr. Halpin.

By Mr. Halpin:

Q. To your knowledge has there been any segregation of public facilities in the City of New Orleans, and if so, please briefly describe.

Mr. Treese: Your Honor, I am going to object again to the form of this question. Of course, I would like to have a running objection as to the relevancy and Your Honor previously ruled on that question.

Judge Robinson: Yes.

Mr. Treese: But the form of questions, the way presented, I have no way of anticipating what the response would be. Would you discuss generally this subject. I wish counsel would present the questions in a light that I can be prepared for some sort of answer.

Mr. Halpin: If it may please the Court: the only reason I am using this form is to expedite matters. I can take my time and go step by step, but I think it would take a lot more time.

Judge Robinson: Instead of doing it in one question, you can do it in two. Inquire of this witness. It will not take that much longer.

Mr. Halpin: I will go ahead and do it step by step.

[687] Judge Robinson: Very well.

By Mr. Halpin:

Q. Mr. Jackson, are you generally aware of the condition of public facilities in New Orleans relative to equal access by black people? A. Yes, I am.

Q. And now, in your own experience do you know of any instances wherein blacks have been discriminated against in the use of those public facilities? A. Yes. Prior to——

Judge Robinson: Just a moment, Mr. Jackson. I will have to ask you to move closer.

Judge Waddy: Just talk a little louder.

The Witness: Yes.

Prior to around '69 there was blatant, in my opinion, just blatant segregation consisting in the use of public facilities. For instance, we used to have around Christmas time a situation where toys were being given out to the unfortunate of the city, and one day you had to go to public facilities whites would go, and on the next day blacks would go.

And access to some of the city hall restaurants at one time blacks were being denied admission to the restaurant and access to those that were put on the municipal auditorium at one time blacks were not allowed to participate selectively [688] with white citizens of the city.

Judge Waddy: Mr. Jackson, I am sitting right close to you and I am having difficulty hearing you. I think you can talk louder than you are talking.

The Witness: Yes, Judge. I wanted to inform the Court I do have a problem with my voice.

Judge Waddy: I see.

By Mr. Halpin:

Q. Are you generally familiar with public employment in New Orleans? A. Somewhat.

Q. To your knowledge do you have any information relative to the hiring of blacks in public positions in New Orleans? A. We are presently having problems—when I say we, blacks in the City of New Orleans are presently having problems in getting significant positions in public employment.

Now, there is a suit presently being filed against our police department for discrimination where you have the city with a population approaching 50 percent black, you presently have less than 10 percent of a force of black officers.

Also in our firemen, with the population approaching 50 percent black, we have somewhat like one or two percent of employees being black. And the gamit of civil service jobs [689] per se I doubt very seriously if we have over the work force of 20 percent black and when you compare the various positions, talking about meaningful positions in tems of supervisory positions, there are few if any blacks holding those positions.

Q. Are you generally familiar with black political organizations in New Orleans? A. I am.

Q. Could you name a few of those? A. You have Southern Organization for Unified Leadership. You have BOLD, Ninth Ward Voters' League, you have the COUP, OPPVL, just to name a few.

Q. Okay. Are any of these organizations city-wide political organizations? A. Most of these organizations are

based in a particular area of the city. I think that on a limited basis OPPVL attempts to city-wide.

Judge Corcoran: Clarify for me what that is.

The Witness: Orleans Parish Progressive Voters League.

By Mr. Halpin:

Q. Generally, of the organizations that you mentioned, could you state generally when those organizations were formed? A. I am familiar with the fact that SOUL, BOLD and COUP were formed around '68, '69, around that period of time. OPPVL, I am not as familiar as I ought to be with when it was [690] formed, but most of the black organizations came into existance around '66, '67, '68.

Q. Can you explain in any way why these organizations happened to come into existence around this time? A. One of the reasons that most of these organizations were formed during this time was because the increase in the ability for blacks to become registered voters, that was one reason.

Another reason was that the support of black spirants for certain elective offices, were two of the main reasons that they came into existance.

And thirdly, which is to try to begin to effectively running black candidates, you know, for office.

Q. Are you generally familiar with the amount of financial resources which are necessary for running various political campaigns in New Orleans? A. Somewhat.

Judge Robinson: Just a moment.

Mr. Treese: I will wait for the next question.

Judge Robinson: I am sorry, I didn't get the answer.

The Witness: Somewhat.

Judge Robinson: Somewhat. All right. Thank you.

By Mr. Halpin:

Q. Generally, could you indicate the relative resources [691] that black candidates who you are familiar with may have for conducting campaigns compared to that of white candidates?

Judge Robinson: All right, Mr. Treese?

Mr. Treese: This goes back to our continuing objection on relevancy, Your Honor. I don't see where the campaign finances of local elections in the City of New Orleans have anything to do with the adoption of a plan that was presented to this Court.

Judge Robinson: I am going to overrule the objection for the time being. You will recall the Court's admonition earlier this morning.

Mr. Halpin: Yes, Your Honor. I do not intend to go far afield, but this is one of the elements considered.

Judge Robinson: He may answer this question, but as the Court indicated, we will be scrutinizing the questions.

You may answer. Do you have the question, Mr. Jackson?

The Witness: As I understand the question——

Judge Robinson: Just a moment.

Repeat the question.

Mr. Halpin: All right.

By Mr. Halpin:

Q. Could you generally compare the financial resources of black candidates for public office in New Orleans with that of white candidates that you are familiar with, to your knowledge? [692] A. To my knowledge, basically the resources, the financial resources, as compared to those of white candidates are very limited. Normally black candidates do not have the kind of campaign funds and monies necessary to run an effective campaign.

Usually, you have to sell suppers, give rallies, solicit, you know, donations, things like that. Blacks' financial resources can nowhere compare, in my opinion, to white candidates.

Q. Are you familiar, generally, with the majority requirement in certain Louisiana elections? A. Right.

Q. Could you generally describe what that requirement is in your understanding?

Judge Robinson: Just a moment.

Mr. Treese: Your Honor, the previous witness was asked this line of questioning and we objected at that time.

Judge Robinson: Yes. Do you object on the same grounds?

Mr. Treese: Yes.

Judge Robinson: The objection is overruled.

You may answer.

The Witness: I believe under the statute it requires that candidates in primary elections must receive a majority vote in order to be elected to that office, that they are [693] aspiring for. That does not, as I understand it, apply to the general election, well, that's the final date at which time you know candidates are elected, but generally that's my appreciation of the statute.

By Mr. Halpin:

Q. All right. In the primary elections, what effect, for instance, that you know of, does this have on black candidates?

Judge Robinson: Just a moment. For what office, primaries, for what offices?

By Mr. Halpin:

Q. Okay. Primary elections for any general elective political office such as city councilman, state legislature to which this law is applicable.

Judge Robinson: You may answer the question, Mr. Jackson.

The Witness: If by chance that a black nominee, a black candidate is fortunate to be in the run-off as a result of the first primary election that in the second primary run-off my experience, my observations have been that it puts them at a disadvantage because he head up with a white candidate, and oftentimes means that he would not be the Democratic nominee for the general election and he would lose.

Q. All right. Can you give any examples of that sort of thing happening from your knowledge? [694] A. Yes. I

think in the case of Teddy Marchand, you know, he lost when there was a head up election.

Q. Why don't you state what office he was running for? A. He ran for state representative.

Q. In what year, approximately? A. I believe that was '71 or '70.

Q. All right. I think that would be sufficient in answer to my question.

Can you think of any other particular election, stating the time and date, where this would be? I am referring to Democratic primary elections. A. There aren't too many blacks. In fact, I can't recall of any blacks that basically have participated in the run-off. I know there have been few who have gotten to the second primary, but the one I do remember is Teddy Marchand.

Q. Okay. Are there frequently general elections for various political offices in New Orleans? A. Oftentimes by the time you get to the general election the office has been decided because normally in general election unless there is Republican opposition, the candidate is really chosen in the first and second primary.

Q. Are you familiar with the Anti Single Shot Voting requirement in Louisiana law? A. Somewhat, yes.

Q. Could you generally describe to us your knowledge of [695] what that requirement is? A. The Anti Shot Voting—

Q. Anti Single Shot Voting requirement? A. It's a requirement whereby if there are two candidates in a particular race, or there are several candidates in a race, and there are two offices, two seats available for that particular office, then a voter would have to cast two votes, one, I assume one for the candidate, at least for two candidates basically.

Q. Does this have any affect upon black candidates? A. Generally it does because the results are that a black candidate, let's say, among a race of four candidates, and he is the only black candidate in that race, generally what happens that while a vote is being cast for him, a vote is

also being cast for other candidates in the race, and he does not get, in my opinion, he does not get his fair share of the votes. And what happens is that it works, in my opinion, to the detriment of black candidates.

Q. Are the two at-large seats in New Orleans elected under a system which does apply to Anti Single Shot Voting? A. Yes.

Q. Could you generally state your position as to at-large elections for city council in the City of New Orleans?

Judge Robinson: The objection will be sustained as to the form of the question Let's get specific, Mr. Halpin.

[696] Mr. Halpin: All right.

By Mr. Halpin:

Q. Are you generally familiar with at-large elections in the City of New Orleans? A. Yes, I am.

Q. Do you have a position relative to the effect of that scheme upon black political strength in New Orleans?

Mr. Treese: Your Honor, I would object.

Judge Robinson: As to form or substance?

Mr. Treese: Both.

Judge Robinson: Well, I will hear you on the question of form, but it is understood in view of the Court's ruling this morning that you have a continuing objection to any and all evidence coming down this line. The court understands it won't be necessary to object.

Mr. Treese: I would object on another ground, Your Honor, and that is it has no probative value from this witness. We haven't qualified this witness as an expert in matters of political science, this is a representative who is a party.

Judge Robinson: If he will pardon the intrusion, I thought your objection to the form of the question went to that matter since as I understood the question it called on the witness to state a position, and I am not so sure as to what that is asking the witness to do.

[697] Mr. Treese: All right.

Judge Robinson: What do you want from the witness? Are you calling for an opinion from this witness as an expert? Are you asking him to state facts within his knowledge?

Mr. Halpin: No, Your Honor. I am driving toward—he mentioned he is familiar with particular elections and so forth and so on. I am driving toward asking him whether based upon his personal knowledge whether he can say anything relative to the racial discrimination or non-racial discrimination of at-large elections in New Orleans.

Judge Robinson: Well, he can state it as a matter of fact or as a matter of opinion.

Mr. Halpin: I think the answer will probably border on both, Your Honor, to be perfectly honest.

Judge Robinson: All right. But you haven't qualified this witness as an expert in the field.

Mr. Halpin: Yes.

Judge Robinson: Do you want leave to do so?

Mr. Halpin: No, Your Honor.

Judge Robinson: Why not ask him what the facts are and let's see where that leaves the situation.

Mr. Halpin: All right.

Judge Robinson: Reframe your question.

By Mr. Halpin:

Q. Are you generally familiar with the at-large [698] elections for city council in New Orleans, the past elections? A. Yes, I am.

Q. Okay. Are you familiar with the election which Ernest Morial ran at-large for council of the City of New Orleans? A. Yes, I am.

Q. Can you describe generally what happened relative to Mr. Morial's candidacy in that election?

Mr. Treese: May it please the Court: this is another one of those "can you describe generally what happened."

Judge Robinson: He can state what he knows about it. The objection is overruled.

You may answer, Mr. Jackson. You are being asked, Mr. Jackson, to state only what you know about a matter concerning which counsel inquired.

The Witness: Yes.

By Mr. Halpin:

Q. Did he win in the first primary? A. I believe he did.

Q. What happened in the second primary, do you recall approximately what sort of opponent he had and what the results of that was?

Mr. Treese: That's three questions, Your Honor.

Judge Robinson: Yes. Let's single the questions down one by one.

[699] Mr. Halpin: All right.

By Mr. Halpin:

Q. Do you recall whether he won in the second primary? A. I believe he lost in the second primary.

Judge Corcoran: I can't hear you, Mr. Jackson.

The Witness: I believe he lost in the second primary.

By Mr. Halpin:

Q. Do you recall what the race of his opponent in the second primary was? A. White.

Judge Robinson: What was your answer, Mr. Jackson?

The Witness: I believe white; I believe he was white.

Judge Robinson: I didn't hear you.

The Witness: I believe he was a white candidate.

Judge Robinson: I'm sorry. Very well.

By Mr. Halpin:

Q. In view of the knowledge that you have just indicated in regard to the history of discrimination and the various other political devices, can you state what effect these devices and history has upon at-large elections in the City of New Orleans?

Judge Robinson: Now, just a moment. Let's make it plain to the witness that you are still calling for facts because [700] you have not yet qualified him as an expert.

Mr. Halpin: Yes.

By Mr. Halpin:

Q. From your own knowledge——

Judge Robinson: Do you still have an objection?

Mr. Treese: I got lost in the middle of the question. I would like to ask the Court if I might have the question reread.

The Court: Certainly. Well, we will have the question reframed to incorporate the feature the Court suggested.

By Mr. Halpin:

Q. From your own knowledge, please state the effect that the history of discrimination which you have testified to and other structural factors in the election law which you have testified to, have upon at-large elections for city councilmen in New Orleans.

Judge Robinson: Can you answer that question, Mr. Jackson, of your own personal knowledge?

The Witness: I believe I can, Judge.

Judge Corcoran: Or is it just an opinion? Are you going to give us facts or opinion?

The Witness: I hope to give the Court facts.

Judge Robinson: Very well. You may answer the question.

The Witness: It is a fact that there exists black voting in the City of New Orleans. And when you have a candidate [701] running at-large that the fact of black voting weighs heavily against black candidates who are running at-large, and a lot of this is due based upon the kind of racial history that has been characterized in the City of New Orleans.

Secondly, I believe that, and I know for a fact, that city-wide elections and the single shot, Anti Single Shot Voting tends to work, and has worked against black candidates, particularly in at-large elections.

Thirdly, the kind of funds that necessitate an effective campaign on the part of black candidates are not readily

available to him in an at-large election, it takes a tremendous amount of monies to run, for a black candidate to run city-wide.

Fourthly, I personally know as a matter of fact that it takes the endorsement of major white organizations in addition to and support of the black communities to elect black candidates.

And to some degree that has worked against black candidates in my belief is that city-wide elections tend to be discriminatory against blacks.

Mr. Halpin: Thank you. I will have no further questions of the witness in view of the evidence that we took of him by deposition.

Judge Robinson: So I take it then the question of possible testimony by Mr. Jackson as an expert is going to be [702] foregone, is that correct?

Mr. Halpin: Well, I would.

Judge Robinson: It is a decision for counsel to make. I simply made a suggestion.

Judge Waddy: You made your decision that you were not qualifying him as an expert.

Mr. Halpin: Yes.

Judge Robinson: I just wanted to be clear.

Mr. Halpin: Yes, Your Honor, I had not qualified Mr. Jackson as an expert in political affairs, but consider that his testimony should be weighed as the testimony of other witnesses in this regard has been weighed throughout the hearing.

Judge Robinson: Very well.

Mr. Treese?

Cross-Examination

By Mr. Treese:

Q. Mr. Jackson, did you testify that you were 30 years old now? A. Yes, I am.

Q. So when was the earliest possible date when you could have registered to vote? A. At 18.

Q. When you were 18? A. At the time that I registered I was 21.

Q. Yes. When was that now? [703] A. That was nine years ago.

Q. Now, you have testified about—I don't know exactly the period of time, but you said you can recall in the old days when there was a delivery of Christmas gifts to the unfortunate, I think you called them. A. Right.

Q. And this you chose as an example of segregation in public facilities; is that correct? A. As one of the examples.

Q. Isn't it true that that program was conducted by the Times-Picayne newspaper, a private newspaper in the City of New Orleans? A. Yes, with the supporters.

Q. What kind of supporters? A. Times-Picayne received endorsements, and at that time members of the city government attempt to use their influence, whether they be city council members or be persons in elective office, attempt to get those endorsements in to the Times-Picayune.

Q. Mr. Jackson, in describing the hiring practices for the City of New Orleans, I believe you testified that few if any blacks hold positions of responsibility within the City Government of New Orleans; is that right? A. I said in supervisory positions.

Q. Isn't it true that the deputy chief Turner is a [704] black? A. Yes.

Q. And before him Deputy Police Chief Cates was a black? A. Yes.

Q. And the mayor's administrative assistant, Mr. Tucker, isn't he a black? A. Right.

Judge Robinson: Just a moment. Did you want to——

The Witness: Yes, I just wanted to say that of the persons that you mentioned, Mr. Treese, that maybe you ought to ask me what do I define as supervisory positions. I did say——

Judge Robinson: Just a moment, Mr. Jackson. Counsel will ask the questions that he wants you to answer.

The Witness: All right.

Judge Robinson: You may proceed, Mr. Treese.

By Mr. Treese:

Q. What in your mind is a supervisory position? A. Those positions whereby a person makes policy decisions concerning matters of a particular department.

Q. Do you know who Cecil Carter is? A. Yes.

Q. What position does he hold? A. Director of Human Relations.

Q. And he is black? [705] A. Yes.

Q. Are any members of the Planning Commission black? A. I believe there may be one.

Q. Isn't it true that between 35 and 40 percent of the city payroll is black? A. I am not sure.

Q. Your father works for the City of New Orleans, doesn't he? A. Yes, he does.

Q. As a matter of fact, isn't he running for elective office right now? A. Yes, he is.

Q. For sheriff? A. Yes, he is.

Q. And I believe you have testified as to the difficulties of raising money? A. Right.

Q. As a black candidate. You are not saying, are you, that blacks only collect or try to gain donations through the black community, are you? Don't you solicit funds from the white community too? A. I assume black candidates do.

Q. You personally solicited funds on behalf of the white community for your father's election? A. I don't recall. [706] Q. You don't recall that. Are you familiar with the civil service system in te Cty of New Orleans? A. Yes, I am.

Q. And are you familiar with the fact that in order to obtain employment in the City of New Orleans there are certain entrance requirements? A. Yes.

Q. In some cases testing? A. Yes.

Q. And do you believe that is discriminatory in a civil service system? A. The method—we have looked at civil

service, and it is our opinion that civil service uses the rule of three, that even in some cases when blacks are passing let's say the entrance exames, that allows the department head to select from the civil service roll which employee that he or she wants.

Q. All right. Now, you said "we." Who is "we?" A. When I say "we," I am talking about concerned blacks in the City of New Orleans, myself, representative Marchand.

Q. Now, Mr. Jackson, with regard to this majority system in the City of New Orleans as it exists, I believe you said that that situation which ultimately results in a black head on with a white, it works to the detriment of a black; is that essentially your testimony? A. Essentially, yes.

[707] Q. Doesn't the City of Atlanta have exactly the same system? A. I would assume so.

Q. Yes. Are you familiar with the results——

Mr. Halpin: I object to the question on the basis that whatever has happened in Atlanta or Indianapolis or anywhere else has anything to do with this case.

Judge Robinson: This is cross-examination of the vitness on a matter concerning which you inquired. Your objection is overruled.

You may answer the question, Mr. Jackson. Do you have the question? The question is are you familiar with—I believe your words were the situation in Atlanta. Perhaps you better clarify.

By Mr. Treese:

Q. Are you familiar with the mayor's race in Atlanta several days ago? A. I am familiar with the results of the mayor's race.

Q. Wasn't that in fact a situation where a white was head on with a black on a city-wide basis? A. In Atlanta, yes.

Q. Hasn't the same thing happened in the City of Los Angeles? A. Yes.

Q. And as a matter of fact hasn't it also happened in [708-715] the City of New Orleans on a city-wide basis in the case of Judge Morial, Judge Augustine and Dr. Spear? A. As I appreciate it about the City of New Orleans, Judge Morial and we are talking about people who are being let's say packaged for particular elective offices, but I can say very candidly, yes, Judge Morial did run for the Court of Appeals, I believe against a white, and I think he later withdrew or got sick.

Judge Augustine and Dr. Spears, Dr. Spears was one black among many candidates running for the schoolboard and Judge Augustine, as I recall, was elected in the same manner.

Judge Robinson: When you reach a point at which it would be convenient to suspend your cross-examination, we will take the recess for lunch.

Mr. Treese: I am there.

Judge Robinson: Very well. At this point this Court will stand in recess until 1:45 this afternoon.

The Deputy Marshal: All rise. This Honorable Court stands recessed until 1:45.

[Thereupon, at 12:30 o'clock p.m., Court recessed until 1:45 o'clock p.m.]

[716] AFTERNOON SESSION

(Trial in the above-entitled matter was resumed at 1:45 o'clack p.m., at the conclusion of the luncheon recess.)

Whereupon. . . .

Johnny Jackson, Jr.,

the witness on the stand at the time the luncheon recess was taken, resumed the stand and testified further as follows:

Mr. Treese: I have no further questions, Your Honor.

Judge Robinson: Very well, Mr. Halpin.

Mr. Halpin: I thought perhaps the Government would inquire.

Judge Robinson: I beg your pardon. All right.

Cross-Examination

By Mr. Friends:

Q. Mr. Jackson, I believe this morning you indicated that you are a fulltime state legislator? A. Yes, sir.

Q. Did you have any employment prior to working fulltime in the legislature? A. About two months ago I functioned as a state legislator and at the same time I was an Executive Director of the Desire Community Center. I have since resigned that job to devote full time to my representative responsibilities.

Q. What was the function of the Desire Community Center? [717] A. The Desire Community Center is a federally funded agency designed to provide recreation, cultural and educational opportunities for resdents of the area known as Desire Florida which is in District E in the City of New Orleans.

Q. Do you reside in District E? A. Yes, I do.

Q. What is the racial composition of your neighborhood? A. The neighborhood in which I live is one hundred per cent black.

Q. Are you aware of the city services provided to the black community in District E? A. Yes, in some portions of District E.

Q. During the past two years, have those services improved or increased? A. Yes, services have increased somewhat. In most cases, those services have increased as a result of the federal programs, Urban Renewal, Model Cities. In fact, in District E alone you have two large neighborhoods that have been designated as Urban Renewal and Model Cities areas.

Q. To your knowledge, has the city services that are provided by the City Council improved? A. Whatever improvements have been generated, I will suggest that there have been some improvements, mostly as a result of the federal monies, and that must go, as I appreciate, to the City Council for designated projects in those areas. [718] Q. Are you familiar with the referendum election

held in November of 1972 to increase the size of the City Council? A. Yes, I am.

Q. Do you know what groups campaigned for the passage of that act? A. Mostly—in fact, the only groups that I know that campaigned for the passage of the expansion of the City Council, actively campaigned, were groups of the black community.

Q. Are you aware of any white groups that campaigned for the passage of that act? A. No, I am not.

Q. Are you familiar with the referendum election held in March of 1973 to increase the Council? A. Yes.

Q. Did the same groups—— A. Yes.

Q. —campaign for that? A. Yes, they did.

Q. Were there any white groups that campaigned for that? A. Not to my knowledge.

Q. Mr. Jackson, since you have been in the legislature, have you had occasion to have the legislature itself deal with subjects concerning laws prescribed in segregation? A. Yes, I have.

Judge Robinson: Prescribe or proscribe?

[719] Mr. Friends: Prescribe.

The Witness: Yes.

By Mr. Friends:

Q. When was that done? A. In '72 we were able to remove from the statutes certain laws.

Judge Robinson: Wait just a moment.

Mr. Treese: If Mr. Jackson is now testifying about laws that were passed by the state legislature that he was a member of, I would object on the grounds of relevancy. We haven't dealt with the state machinery as far as I know in this case.

Judge Robinson: All right, Mr. Friends, what is the relevancy?

Mr. Friends: Mr. Jackson is a state legislator from the City of New Orleans and in addition to presenting issues that deal with the state generally, he is also concerned with the City of New Orleans. The relevancy is that he, as

one of the black legislators—that is the only opportunity that these issues have been brought before this state, which also affected the City of New Orleans.

Judge Robinson: Well, if I understand you correctly, you don't have the right question to make that inquiry. Your approach—well, I think I have your approach. I don't want to influence the testimony of the witness. I am going to [720] sustain the objection to the question. I will let you reframe it if you wish.

Mr. Friends: I will strike that question, Your Honor. We have no further questions.

Judge Robinson: Now Mr. Halpin:

Redirect Examination:

By Mr. Halpin:

Q. Mr. Jackson, you stated that there is a black deputy Superintendent of Police. Are there other Superintendents of Police at a same level? A. Yes, I believe there are two other persons who are deputy superintendents.

Q. And what is their race? A. They are white.

Q. You were also asked whether there was a black criminal district judge and you stated yes, Judge Israel Augustine. Do you know how many criminal district judges there are in New Orleans? A. I think there are about nine or ten.

Q. Are any of the others black? A. You have one black that is a magistrate judge in the criminal district court. I understand of the criminal judges there is only one.

Q. And how many black members are there on the New Orleans School Board? [721] A. One.

Q. Do you know how many members there are on the School Board? A. I think there are five.

Judge Waddy: How many?

The Witness: I think there are five.

By Mr. Halpin:

Q. You indicated that Judge Earnest Morial was elected to the Fourth State Circuit Court of Appeals. Do you know

offhand how many judges sit on that court? A. No, I don't right offhand. I think the number is somewhere around six or seven.

Q. Do you know of any other black persons besides Judge Morial that sit on that court? A. No, I don't.

Mr. Halpin: No further questions.

Judge Robinson: Anythng further? Mr. Treese?

Mr. Treese: Several questions, Your Honor, that have been raised by Mr. Friends.

Recross-Examination:

By Mr. Treese:

Q. Mr. Jackson, with regard to the expansion of the Council referendums that went to the people and which Mr. Friends has just asked you about, he asked the groups who supported it. Didn't the present City Council pass favorably [722] on those referendums before they went to the people? A. As a matter of procedure, yes; yes, they did. But my impression was when he talked about groups that he meant organizations. I didn't know he was referrng to the City Council.

Mr. Treese: It was a misunderstanding. That's all I have.

Judge Robinson: All right, gentlemen, have you all finished with this witness? I take it he may be excused.

Mr. Jackson, you are excused as a witness, although you are free to remain in the courtroom if you wish.

(Witness excused.)

Mr. Halpin: May it please the Court, we did not intend to call any other live witnesses. We do not mean to represent by this in any means that this is the only testimony that our case is relying on. Rather, we are relying upon the evidence that has been taken throughout the proceedings and a great deal of evidence in the depositions which refer to our point.

I would ask the Court to take judicial notice of certain statutes. I would like to ask the Court to take judicial notice of LSA RS—that is——

Judge Robinson: Not so fast.

Mr. Halpin: Okay. LSA RS, that is Louisiana Statutes Annotated, Revised Statutes, 33:1221.

[723] Judge Waddy: May I have that again?

Mr. Halpin: 33:1221. And informally, for the information of the Court, that statute reflects that until 1968 there was a general state policy of having single member districts; that is, prohibiting at large elections for parish school boards and police juries throughout the state, relative to the point of there being a general state policy against at-large elections.

The second statute that I would like to ask the Court to take judicial notice of is LSA RS 18:358(1969), which sets forth the majority requirement referred to in some of the testimony.

The third statute is LSA RS 18:351 (1969), which is the so-called anti-single shot voting law or sometimes known as the full slate voting law.

We would also ask the Court to take judicial notice of the proceedings in two federal cases. One, Orleans Parish School Board v. Bush reported at 242 F.2d. 156 (Fifth Circuit) and other proceedings in that case.

Judge Robinson: When you say "proceedings," do you have reference to the opinion?

Mr. Halpin: Yes, the opinion and any other subsequent opinions in that case. This is a school desegregation case with continuing jurisdiction, and the cite I gave you is the prncipal opinion, but to also note other opinions in that [724] case.

The third case is Louisiana v. United States, the Supreme Court opinion and lower court opinions in it. The Supreme Court opinion is reported at 380 US 145 (1965). This case indicates that until 1965 there was a statewide interpretation test for voting and sets out other findings relative to voter discrimination statewide.

We would ask that the Court take judicial notice of those statutes and cases.

Judge Robinson: I gather then that with this the intervenors rest?

Mr. Halpin: We will rest with this, Your Honor.

Judge Robinson: Very well, Mr. Halpin.

Mr. Stoner and Mr. Treese for the plaintiffs, do you propose to introduce any other evidence? This would, of course, include the opportunity which the Court mentioned this morning to respond to any evidence put in by the intervenors on the at-large issue.

Mr. Stoner: Yes, Your Honor, we do wish to offer rebuttal testimony.

Judge Robinson: Very well.

Mr. Stoner: We will be brief.

Judge Robinson: Are you prepared to go forward?

Mr. Stoner: We are prepared to go forward.

Judge Robinson: All right, you may call your first [725] rebuttal witness.

Mr. Treese: Mr. Lambert.

Judge Robinson: Just before you get underway, I recall at this point that on yesterday counsel for the intervenors called Mr. DiRosa and he took the stand, was asked a few questions and he was excused from the stand.

Mr. Halpin: If I may clarify, Your Honor. I forgot to mention it to the Court. I discussed with opposing counsel that in view of the depositions of Mr. DiRosa which covered the substance of the testimony that I would not use him as a live witness.

Judge Robinson: But the purpose of my raising the question, I want to make sure that he understands that he is released from further attendance at this trial, if that is the understanding of counsel.

Mr. Halpin: Yes, sir.

Judge Robinson: He has been?

Mr. Halpin: Yes, sir.

Judge Robinson: Very well, you may proceed.

Whereupon . . .

John Lambert

was called as a witness by and on behalf of the plaintiffs, and, having been first duly sworn, was examined and testified as follows:

[726] Direct Examination

By Mr. Treese:

Q. Mr. Lambert, would you state your full name, please, and present residence? A. I am John Lambert, Jr. I reside at 6126 Perlita Street in New Orleans. I think the address that may have been furnished in one of the exhibits would be Presburg Street which is about three blocks away. I simply moved three blocks.

Q. All right, Mr. Lambert, would you tell the Court what your occupation is. A. I am an attorney at law and I am also a member of the City Council of the City of New Orleans.

Q. Representing which district? A. I represent District D, which is the 7th and 8th Wards of the City of New Orleans.

Q. Mr. Lambert, with regard to the citywide race of Judge Morial, do you have any knowledge or information surrounding that citywide race? A. Well, Judge Morial qualified—Are you talking about the Court of Appeals race?

Q. That's right. A. Judge Morial qualified for the democratic primary election in the Court of Appeals. The then incumbent judge, Chief Judge Godfrey Reid, which was the Chief Judge of the Fifth Circuit—of the Court of Appeals, State of Louisiana, [727] Fourth Circuit, Judge Regan, for reasons of personal health problems, I think, involving his wife, decided not to run and took his retirement which left Judge Morial as the democratic nominee.

Qualifying against Judge Morial, however, in the general election was a democrat by the name of Oliver Delry who was traffic court judge of the City of New Orleans,

who had been in that position for any number of years. I would say ten years or so, who was a white man, and who also was a very good attorney too.

They had, as a result, a general election run-off between Judge Delry and Judge Morial, and Judge Morial won fairly handily.

Q. All right. Turning—— A. I might say Judge Morial was well respected too,——

Q. Very well. A. —in the community.

Q. Turning to another subject, are you a registered voter in the city of New Orleans? A. Yes, sir.

Q. Are you familiar with the registration process in the City, the current registration process in the City of New Orleans? A. Yes, I think I am fairly familiar.

Q. I wonder if you could describe for the Court the [728] machinery of the Registrar for the City of New Orleans. A. Yes, sir. I would like to preface this by saying, Your Honors, that my first advent to politics was in 1969 when I first ran for the House of Representatives and lost and then ran for the Council in the '69 election and then got elected.

Prior to my taking office, the Registrar of Voters by state law was appointed by the governor to the various parishes, and the prior registrar of voters or the registrar of voters at the time that I got elected to the Council was a gentleman by the name of Tim Gallinghouse. Mr. Gallinghouse, he had been appointed, I think, by Governor Davis, if I am not mistaken.

Also prior to my getting elected, prior to the Council taking office in May of '70, the new Council, the present Council, the State legislature had amended the statutes to provide that the local legislative bodies or the various parishes had the authority to appoint the Registrar of Voters. Up until that time the Registrar of Voters sort of —if he picked the right governor, he stayed in office.

There was a problem or a difference of opinion that had resulted on the Council between Mr. Gallinghouse and members of the Council on Mr. Gallinghouse engaging in

politics while he was a Registrar of Voters. That came to a head at about the time that we took office when we said that under [729] this new act we had the authority to appoint a Registrar of Voters and we were going to appoint someone other than him. He sort of solved the problem by resigning the position. So, we didn't have to come to whether or not we had the authority versus whether or not he had the authority to stay in.

At about that time we were being pressured, not unethically so but by recommendations from various groups of blacks and whites, political and non-political, civic and otherwise, to make an appointment as to their nominee or their recommendee, and we were really all divided on who to appoint, the members of the City Council.

At one knockout session the name was mention of Mr. Antonio Papale who was then the Dean Emeritus of the School of Law, Loyola University. His name was not any one of the names that had been submitted by any of the other groups, and it appeared to be a good appointment from the aspect that Loyola University, particularly Dean Papale of the Law School—he was Dean at the time I was there; he had taught me and many members of the bar—had a very fair appreciation of the problems that—the social and economic problems that we had between the various interests of the City of New Orleans, black and white and racially and otherwise.

As a matter of fact, he integrated Loyola Law School at the time I was in it, and he worked very closely with Father Toomey of Loyola University in industrial relations in [730] this particular area.

So, he was asked to come and visit us, and after talking with him, finding out his views, we decided that maybe Dean Papale might be a good selection.

I might say that prior to this time, however, the Registrar of Voters had, through some legislative authority, created two permanent substations for voter registration in the City of New Orleans, one out along what is known as the Chef Menteur Highway, which is Highway 90 com-

ing in the City of New Orleans. It's out in Gentille East or in the 9th Ward. And one over in Algiers to serve the people over there so they wouldn't have to come down to New Orleans.

We, in discussing with Dean Papale at a subsequent time after he took office—it might have been his idea, it might have been a mutual idea of his and members of our staff and ourselves in talking with him. We were trying to get some sort of a concept of mobile registration, voter registration started. Not mobile in the sense of a van but mobile in the sense that we could send somebody with the necessary paraphernalia down to a particular area and let them stay there for several weeks or months if it was necessary.

He got the cooperation of the City of New Orleans. I received the cooperation of the City Council. As a matter of fact, I think we budgeted some additional monies for him to do that. We were, I think by state law, required to provide [731] a certain percentage of the budget of the Registrar of Voters and a percentage comes from state funds.

So, we were interested in this program. As a matter of fact, he came out to my area in the 7th Ward for several months at a fire station which was in the vicinity of the housing projects so that the people could walk merely two or three blocks to register.

The registration was no problem. There was not this question any longer of turning down people simply for failure of identification of where you lived. Under the act of the state legislature—although they eliminated the educational requirement because at one time years ago, and I am talking about the 1950's and thereabouts, they used to turn people down admittedly if they could recite certain parts of the Constitution, which is a factor that none of the City Council is proud of. We are not proud of that particular activity.

In any event, it was an attempt in the present administration, particularly after 1971 when we took office, to

get the voter registrar into the neighborhood and have him help people register, in an effort, if they didn't have identification, to try and work out some method by which they could show where they lived. You have to register people for a certain ward or a certain precinct. You couldn't get all your relatives and run into Mr. Ciaccio's district, for example, and regster them all there just in order to get voting strength [732] over there.

The idea was to make sure that they registered where they lived. And he did this. He extended himself so that we had the Voter Registrar's deputies in the particular areas and they would advertise where they are going to be and circulars would be put out in the neighborhoods, in the churches, things like that.

So, Dean Papale, I think, tried to take these steps to facilitate the registration.

Q. Can you think of any other inhibitions or encumbrances that now exist in the registration process which might in any way restrict the right of a citizen of New Orleans to register? A. No, sir, I haven't. I will be perfectly honest, since we have taken over I haven't had any complaints of people coming to me, and I am close to the members of the black community and the white community in my area, and I haven't had any complaints of people being denied the right to register.

Q. Mr. Lambert, turning now to my final subject, during the luncheon break I asked you if you could prepare a list of city officials for the city, employed by the City of New Orleans, as representative of blacks serving in high capacity positions within the City. I wonder if you could just read to the Court the names and the positions. A. Yes, sir. If Your Honors please, one of the major [733] efforts, I might say, that I have to compliment the Mayor of the City of New Orleans on, his administration since 1970 and in his effort as a councilman prior to that, was to involve blacks in the mainstream of city government. To that extent he had appointed Mr. Terrence Deverney, who has the title of Assistant Chief Administrative Officer, but he has the responsibility of coordinating all the federal programs

in the City, and he has a staff, and it is a very big responsibility because of the extent of federal funds that are now available to the cities, particularly in revenue sharing. Prior to that there were model cities monies and urban renewal monies.

I might say that the position he holds is probably the highest paid civil service position in the city hall pay plan.

Mr. Robert Tucker, who is also a candidate for councilman at large and has the endorsed support of the mayor whenever Your Honors decide we can run. He is the Executive Assistant to the Mayor. He is one of two executive assistants.

Mr. Henry Simons, who comes to us very qualified, is the Director of the Department of Finance. He has a very terrific responsibility for the revenue department in the revenue collection of the city.

Mr. Andrew Sanchez serves as the Director of Property Management for the City of New Orleans.

[734] Mr. Sidney Bartholemy is the Director of the Department of Welfare of the City of New Orleans.

Mr. Cecil Carter is the Director of the Human Relations Department of the City of New Orleans.

Mr. Clyde McHenry is the Director of the Housing Authority of the City of New Orleans. Now, I might say here, the Housing Authority is a state agency or corporate body. It is a public corporation in that it is not owned by any private interest. Its purpose is to provide public housing for the city. It was created many, many years back. The mayor has the authority of appointment of the different members or the directors of the Housing Authority, the different board members, and they in turn select the director. The mayor's nominee for the position was Clyde McHenry and they selected Clyde McHenry as their director. It is not an agency of the city government as such. It is a separate entity. But the mayor has that authority of appointment to the members.

Mr. Gerald Douglas is the Director of Community or Area Manpower Planning for the City of New Orleans.

Mr. Arthur Simmons is a director of Youth Opportunity Programs for the City of New Orleans.

Helen Stanwood is the Deputy Director of the Department of Health. The Director of the Department of Health is a woman physician, a white lady by the name of Dr. Tompson. I think a physician has to be named as the Director, and [735] Mrs. Stanwood is the Deputy.

We have already mentioned Louis Turner who is Assistant Chief of Police. We have the Chief of Police who is Clarence Geruso, white. Mr. Louis Turner is in second position, Deputy Chief of Police, and then there is a third position which is the Second Deputy. Chief Duke is the third. Before Louis Turner was Sidney Case who was also a very well qualified black police officer.

Mr. Emmet Molten is the Director—Deputy Director of NORD for the City of New Orleans.

Then there is King Wells. Mr. King Wells is the Deputy Director for the Community Improvement Association of the City of New Orleans.

In addition to that, they have Mike Stalks who is on the City Attorney's Staff, an attorney that I know about.

And I am sure there are other positions, other people in supervisory positions.

Q. You developed this list from memory; is that correct? A. Well, yes, you know, talking with Councilman Ciaccio, I said, "Let me see who these people are." I know all these people very personally except—I know Mrs. Stanwood, having met her, and Mr. Wells.

Mr. Treese: I have no further questions.

Judge Robinson: Cross-examination, Mr. Shurtliff?

Mr. Shurtliff: Yes, Your Honor.

[736] Cross-Examination

By Mr. Shurtliff:

Q. Councilman Lambert, you were discussing the election contest of Judge Morial. Was Judge Morial the democratic nominee? A. Yes, sir.

Q. And then Judge Delry qualified? A. Yes, he was a democrat but he qualified as an independent.

Q. I see. Is that a normal event in Orleans Parish politics, to have persons qualified as independents? A. Well, that is the first time that it's been done in recent years that I can recall. I can't recall any other election.

Q. Do you know of any independent candidates that have ever qualified in one election? A. No, not in recent years. I don't recall. Do you have any in mind? Maybe——

Q. You discussed the registration activities of the parish, the City Registrar of Voters. Since you have taken office, do you know, Councilman Lambert, whether blacks are at the present time registered in Orleans Parish in numbers proportionate to their voting age population as are whites? A. I don't have any independent knowledge of that, no. I do know this, that I read a study recently where a black [737] community was a more youthful community than the white community in the City of New Orleans having more children. If there is any disparity in the percentages, you know, I would venture a guess to say that probably the whites have more registered than blacks, if you wanted my estimate. But I would also say that the reason for that would be, also in my opinion, the youth factor. You know, there are more children in the black community than white.

Q. Would there be any other factors that you are aware of that if that is the case would—— A. Not today. I don't think that as of the last four or five, six years, I don't think that the problem in voter registration is a factor, no.

Q. Was there a problem before the last four or five, six years? A. Well, as I mentioned to the Court, the problem was several years back, which we aren't proud of, maybe around the 1950s and thereabouts, you know, to the 60's. It started easing up some, and then in '65 the Voters Rights Act came into play then. But since this administration taking office in 1970 we have not had that problem.

Q. Councilman Lambert, you indicated the number of persons who are black that hold supervisory positions in the—— A. I said responsible supervisory.

Q. Responsible supervisory positions in the city govern- [738] ment. A. Yes.

Q. And you listed a number of directors of various agencies. A. Yes, sir.

Q. Or departments and some deputy directors of departments or agencies. A. Yes, sir.

Q. And I take it that there are on your list about thirteen persons so listed? A. There were about thirteen persons name; yes, sir.

Q. Do you know, Councilman Lambert, how many positions there are in city government that are equally as responsible in your judgment as are those positions that you have just listed? A. Well, let me see if I can. It's tough to answer that question, Mr. Shurtliff. There must be some ten major departments in the city, and if I had the charter we could go through them. Of those ten major departments, I might say this, Your Honors, that the mayor has the power to appoint under the city charter the department directors, the deputy directors and some departments have a secretary. So, by and large, except for maybe one department, two departmtnts, he has the authority to appoint three jobs.

Now, those are appointed jobs. They are not civil [739] service jobs. All the rest of the positions in city government except those on the mayor's staff are civil service jobs. So that of the ten, twelve, ten major departments, let's say, three of them are being held by—three or four of them are being held by blacks. Some of these are not major departments, like Youth Opportunity Program is not a major department of this city. And then you have three that are being held by the deputy, the deputy slots are being filled by blacks.

So, say of the ten or say twelve major departments of the city, you have directors who are blacks, and you have three deputy directors in three other departments who are black.

Q. Do you know, Councilman Lambert, how many assistant city attorneys there are in the City of New Orleans?

A. I don't know. The city attorney's office always comes in for a little bit more money for those attorneys. You know how they are. I would say he might have a staff of about eight or ten attorneys.

Q. Would that include the city attorney staffing of the criminal courts? A. No sir. The criminal courts are not staffed by the city attorney. The District Attorney of the Parish of Orleans employs assistants to staff the criminal courts.

Q. There are no city criminal courts? A. Well, we have traffic and municipal courts. But the figure I gave you of about ten to twelve would include those [740] who go down and represent the city in traffic courts or maybe municipal courts; yes. They have other blacks employed by the city who have left, you know, because the salary isn't that lucrative to want to stay a long time.

Mr. Shurtliff: Thank you. I have no further questions.

Judge Robinson: Do you have any cross-examination, Mr. Halpin?

Mr. Halpin: No.

Judge Robinson: Mr. Cotton?

Mr. Cotton: No.

Judge Robinson: Any redirect examination?

Mr. Treese: The Court's indulgence a moment?

Judge Robinson: Certainly.

(Whereupon, plaintiff counsel confer.)

Mr. Stoner: May it please the Court, we have no further questions of Councilman Lambert.

Judge Robinson: I take it that Mr. Lambert may be excused.

You are excused, sir, although you are welcome to remain in the courtroom.

(Witness excused.)

Mr. Stoner: May it please the Court, that will be the plaintiffs' rebuttal testimony.

With respect to the matters that were raised yesterday [741] referring to the councilman at large, we would like to call one or two matters to the Court's attention.

Judge Robinson: Very well.

Mr. Stoner: That is this: Under the charter of the City of New Orleans, the councilmen at large, unlike the district councilmen, are charged with certain other responsibilities. They are members of, for instance, the Sewer and Water Board of the City, that is, one of the councilmen at large is; the Board of Liquidation, the Dome Stadium Commission, by example.

So, the Court should know that by the charter the two councilmen at large do have additional responsibilities over and above their responsibilities as councilmen on this seven-man council.

Mr. Halpin: Your Honor——

Judge Robinson: Just a moment. Can this hold until Mr. Stoner gets through with his presentation?

Mr. Halpin: Yes, sir. I thought he was winding up.

Judge Robinson: Mr. Stoner, may I make a suggestion? Portions of the charter were appended to the complaint in this case.

Mr. Stoner: That's right.

Judge Robinson: I take it that the charter—well, I don't know. I have seen some rather large city charters. Is it a massive document?

[742] Mr. Stoner: I don't think it is, Your Honor.

Judge Robinson: Would it be possible—it doesn't have to be done today—simply to file a copy of the charter, and you might advise the Court as to the portion or portions that you would want us to examine on the point that you have just mentioned.

Mr. Stoner: That will be helpful, Your Honor. May we have leave to file with——

Judge Robinson: Yes.

Mr. Halpin: We have no objection to it. We would like to do that.

Mr. Shurtliff: We have no objection.

Judge Robinson: We will be calling on you for some filings and you will have ample opportunity to do so.

Judge Waddy: Let me ask you this question, Mr. Stoner. Does the charter indicate whether the five councilmanic members who are elected from the districts have any authority in changing the at-large method of selecting; in redistricting or selecting, do these five members have anything to do with changing the setup as to the number of——

Mr. Stoner: They don't, Your Honor.

Judge Waddy: Suppose that the proposal to change it to eleven had passed. Would there still have been two members at large?

Mr. Stoner: Yes, Your Honor. Under that proposal, [743] which incidentally was adopted by the City Council, the ordinance did call for two of the eleven to be elected at large and nine to be elected from councilmanic districts.

Judge Waddy: Well, now, those two that were to be elected at-large, were they left to be elected at-large because the Council couldn't change that?

Mr. Stoner: No, Your Honor. I assume that any ordinance that was adopted by the Council and passed by the voters would be the charter of the city—would be an amendment to the charter of the City of New Orleans.

Judge Waddy: Then as I understand it, in any redistricting procedure, this council has a right to do away with the positions of councilman at large.

Mr. Stoner: No, no, no, sir. In a redistricting procedure, no, sir, they do not. The only thing, they had authority to adopt a proposed charter change and to submit it to the electroate. They did that on two occasions. One was the occasion of the eleven-man council and the other was the occasion of the nine-man council.

Now, the City Council as presently constituted adopted that as a proposed ordinance, as an ordinance, and if approved by the people at a general election would have had the effect of amending the city charter of the City of New Orleans. In both cases the electorate defeated the proposed amendment to the charter.

[744] So, the present council has the responsibility under the charter of redistricting itself according to a charter provision that provides for two councilmen at large and five councilmen from councilmanic districts.

Judge Waddy: So that in the absence of an amendment to the charter, the council has no right to change the positions for councilman at large; is that what you are saying?

Mr. Stoner: You are absolutely right, sir.

Judge Robinson: I have one other question related to that. Could the council have adopted a proposed ordinance that would have eliminated the councilmen at large? For example, which would have provided for the same nine or the same eleven members of the council but all would be elected from districts. I realize, of course, that means that you have got to make up some other election districts, and then after having acted as the council in that respect, submitted the proposition to the voters of New Orleans as a matter of referendum, and if the voters of New Orleans had approved it at the referendum, would it have automatically changed the charter?

In other words, what I am trying to find out is: does the charter admit of a change by the machinery that you have mentioned, the adoption by the council of a referendum that would have eliminated at-large councilmen?

I don't know whether you can answer that question or [745] not, but if you can it will be helpful.

Mr. Stoner: I believe that I can answer and I believe the answer to that would be yes, it could. However, it would have to also change all other provisions of the city charter which give to the councilman at large other responsibilities over and above those of the district council.

Judge Robinson: I can appreciate that. The point that it was within——

Mr. Stoner: May I just confer with the Assistant City Counsel?

Judge Robinson: Certainly.

(Whereupon, plaintiff counsel confer.)

Mr. Stoner: I am informed, Your Honor, that the responsibilities which the councilmen at large have over and above the responsibilities that they have as a member of the council, such as the membership on the Sewer and Water Board, the Board of Liquidation, the Dome Stadium Commission and so forth, are set by a state law, and not by city charter. So that my previous answer would have to be amended and I would say no, the city council would not have authority to change that without a change in state law.

Judge Robinson: Very well. Did you have some further presentation you wished to make at this time?

Mr. Stoner: I have one other matter that I wanted to call to the Court's attention and that is in the petition [746] for intervention which was filed by the intervenors. There was attached a copy of the complaint of the intervenors in Civil Action 73-1862D, which is an action in the United States District Court for the Eastern District of Louisiana.

I would like to call to the Court's attention that on August 1st, prior to the prior hearing in this case, there was submitted a proposed order in that case by counsel for the intervenors which did not refer to the change of the two councilmen at large but merely asked that court to appoint a special master for the redistricting of the five councilmanic districts.

I would submit to the Court that counsel for the intervenors is now coming before this court and asking this court to hold that the two councilmen at large should be changed, which is entirely inconsistent with the position which counsel for the intervenors has previously taken in the Louisiana case.

Judge Robinson: Very well, Mr. Stoner.

Mr. Stoner: Thank you.

Judge Robinson: Now, does that mean that at this point you rest the case for the plaintiffs?

Mr. Stoner: We do.

Mr. Halpin: Your Honor, I would like—

Judge Robinson: Would you come to the lectern.

Mr. Halpin: Yes, sir. I would like to call some- [747] thing to the attention of the Court too relative to what Mr. Stoner has just said as to the pleading in New Orleans.

Mr. Stoner was not present at the conference held there, but Mr. Salatich was, and indeed what he says is true, that pleading was filed. But there was a great deal of discussion in conference as to that not binding us in any shape, form or fashion, and we did consider specifically the question of at-large at that time. There was some question that that court might go forward before this court proceeded and device a districting plan, and under no circumstances were we in that way failing to inform the counsel of our position against the two at-large seats nor were we taking a position which should be termed as inconsistent with any position here.

Judge Robinson: The complaint filed in the Eastern District of Louisiana litigation does not mention in any shape or form any issue with reference to at-large elections or at-large councilmen.

Mr. Halpin: That is correct.

Judge Robinson: I took pains to recheck it again after yesterday.

Mr. Halpin: Yes, that's true.

Judge Robinson: Now, is there anything else in that litigation that developed any issue of that character?

Mr. Halpin: No, sir, there was not. Mr. Stoner has referred to another pleading by which we submitted a [748] proposed guideilne for the master.

Judge Robinson: And we are advised by the pleadings that that court did appoint a master.

Mr. Halpin: Yes, sir.

Judge Robinson: We do not have a copy of the order of appointment so I can only assume what—Were instructions given in the order appointing the master as to what the master was to do?

Mr. Halpin: I will have to check my file. Just a second. I have it with me. My recollection is, though, that the spe-

cial master was appointed and the court had called for guidelines and then did issue a brief order appointing the special master. But, as I recall, they were not detailed guidelines. But I will check that in just a moment.

Judge Robinson: Well, you can just let me know in the event—Mr. Stoner, would you—Do you want to speak to Mr. Halpin?

Mr. Stoner: Yes, I just wanted to raise the question as to whether or not the entire special master procedure was not suspended,——

Judge Robinson: Well, I was going to get to that.

Mr. Stoner: —pending the outcome of this suit.

Judge Robinson: We were advised that it was, but this was advice given to us, as I recall, in August. I just want to make certain that the situation remains the same.

[749] Mr. Halpin: The status of that case is that everything there is being held in abeyance pending the disposition of this Court.

Judge Robinson: Very well. I don't think the matter that I inquired about previously is terribly important, but you can just let me know in the event your response, which you——

Mr. Halpin: All right.

Judge Robinson: —stated you were giving from recollection is materially accurate.

Judge Waddy: Mr. Halpin, do you consider that it is a responsibility of this Court to devise a redistricting plan in this case?

Mr. Halpin: Your Honor, I think it is within the power of this Court. The Court in Petersburg essentially gave affirmative relief in terms of saying to the City of Petersburg——

Judge Robinson: It does not specify to set any district lines.

Mr. Halpin: No, but it did suggest that, well, if you recreate single member districts, annexation would be all right. What I am suggesting to this Court is that it would be appropriate for this Court perhaps to suggest in terms

of relief or guidelines, but it would not be appropriate for this Court to actually devise a redistricting plan.

[750] Judge Waddy: You said something that gave me the impression that you were expecting this Court to prepare a plan, and I wanted to clear that up.

Mr. Halpin: No, sir, under no circumstances.

Judge Waddy: I asked Mr. Stoner, who represents the plaintiff here, whether or not that was contemplated in their law suit.

Mr. Halpin: No, Your Honor, I think not.

Judge Robinson: I haven't looked at the order in Petersburg on this aspect of it, but the opinion makes it plain that all that that court did in the Petersburg case was to say, that is, to say to the city, you may go forward with your annexation provided you conduct your councilmanic elections from here on on a ward rather than on an at-large basis.

Mr. Halpin: Yes, sir.

Judge Robinson: Which in the view of the court in that litigation would have eliminated any possibility of diluting the vote of any citizens of the city.

Mr. Halpin: All right. Along the same lines, I am suggesting that—I'm sorry.

Judge Robinson: Do you think that the litigation before the court is going to give this Court an opportunity to make a disposition assuming that we should reach that point by way of decision, a disposition that would be that simple and clear cut?

[751] Mr. Halpin: Well, this is a more complex case, but I would suggest that the remedial area of the Court does lie in that fashion. I think what we are asking this Court to say is that, you know, should the City Council of New Orleans be elected from single member districts which are not gerrymandered in any shape, fashion or form, and such would appear to be in compliance with Section 5. That, I think, would be parallel to what the court——

Judge Robinson: Doesn't that Section 5 limit the authority of this Court in this case and the disposition to be made simply to a declaratory judgment?

Mr. Halpin: Yes, sir, I think it does. Nevertheless, I think that, of course, we have the problem, for instance, with the Justice Department. When they do object to a plan or approve a plan, frequently the reasons are not detailed—are not stated in great detail, and the Council has been heard to observed repeatedly, "Well, they didn't know what they were supposed to do."

I think it would be appropriate for this Court to give, nevertheless, some explanation or guidelines or so on if they do find that the City Council has not met its burden, so that in the future they might know better what to do.

Judge Robinson: Well, I wasn't trying to pressure you. Like Judge Waddy, I just wanted to clarify your expectation. We will be calling on you for briefs. I will get to [752] that in a few minutes.

Now, Mr. Halpin, when Mr. Stoner had the lectern, you arose. Have you covered the matter that you intended to bring up?

Mr. Halpin: Yes, sir. This was the matter that I wanted to clarify.

Judge Robinson: This is a bit out of order but this is out of the normal progression of inquiring of counsel, but I take it that the intervenors submit their case in toto at this point; do they?

Mr. Halpin: Yes, Your Honor.

Judge Robinson: Very well.

Mr. Stoner, would you return to the lectern. Just Corcoran has a question for you.

Judge Corcoran: I don't know whether you can answer it or not, Mr. Stoner, but I am sure the city attorney can.

In connection with these at-large seats, these two at-large seats, has there been any change in the boundaries of the city since the 1960 census? Has there been any annexation?

Mr. Stoner: To my knowledge there has been none since the home rule charter was adopted in 1954. But may I check that with Mr. Salatich?

I am informed, Your Honor, that there have been no changes in the city boundaries of the City of New Orleans [753] since 1912, and the present home rule charter which is before the Court was adopted in 1954. So, the question of annexation as in Petersburg—as being involved in the Petersburg case is not involved in this case at all.

Judge Robinson: Mr. Stoner, we just want to make sure, did the plaintiffs put in all the exhibits that they intend to put in evidence in this case?

Judge Corcoran: You haven't designated the depositions.

Mr. Stoner: The only matter pending, Your Honor, would be the depositions which have been taken at our direction. I though by stipulation we had previously agreed that all depositions——

Judge Robinson: That's correct.

Mr. Stoner: —would be admitted into evidence for the purpose expressed in the depositions.

Judge Robinson: But your last reference was to what? I didn't quite follow you.

Mr. Stoner: Well, I believe the government has formally offered the depositions which they had taken and assigned to them an exhibit number. We have not done that to our deposition. We would be happy to do so if the Court would like those depositions to be designated by an exhibit number.

Judge Robinson: No, I don't know that that would be necessary. I just want to be clear on this. What the [754] plaintiffs desire would be all depositions of all deposed witness es in evidence for consideration by the Court?

Mr. Stoner: That's right, Your Honor. It was my understanding that was the stipulation between the parties.

Judge Robinson: It was my understanding that we so decided on yesterday, gentlemen.

Judge Waddy: I believe all of the maps and other documents were admitted into evidence the first day. I have a list of some fifteen exhibits.

Mr. Stoner: Yes, that's right.

The Deputy Clerk: All except No. 16.

Judge Waddy: No. 15 was not?

The Deputy Clerk: It is the only one that is not admitted, Your Honor.

Judge Robinson: What is No. 16?

The Deputy Clerk: It's an opinion with a letter attached.

Judge Waddy: It was a letter. No. 16 was a letter containing an opinion. Was that it?

The Deputy Clerk: I guess that's what it was, Your Honor.

Mr. Stoner: I am sorry if I overlooked it. The exhibit number is marked as though it is in evidence.

The Deputy Clerk: I guess it is.

Judge Robinson: Yes, I notice.

[755] Judge Waddy: I had noted that all 16 were in.

The Deputy Clerk: Right, yes.

Judge Robinson: Very well. That square you away; does it?

Mr. Stoner: It does, Your Honor.

Judge Robinson: Mr. Shurtliff.

Mr. Shurtliff: May it please the Court.

Judge Robinson: Now, we have one final matter for you and that is Exhibit No. 31, that we will have to make a determination on. But before getting to it, do you have anything else?

Mr. Shurtliff: On the depositions, Your Honor, if I may.

Judge Robinson: Yes. Move to the lectern, will you please.

Mr. Shurtliff: The depositions that we offered earlier on today were depositions taken earlier in this case before the trial was taken in August. There are now eight depositions that have not been offered, that our understanding is would be jointly offered, and we have asked the Clerk to mark those eight depositions as joint exhibits, and pursuant to the stipulation had agreed to any they are marked Joint Exhibits 1 through 8.

The Deputy Clerk: I just put No. 1.

Mr. Shurtliff: I see. That is my understanding.

[756] We did not previously offer the depositions taken at our request.

Judge Robinson: You are speaking now of the matters stipulated which you advised us of earlier today?

Mr. Shurtliff: Right.

Judge Robinson: Very well. Now, just before getting to Exhibit 31, may I inquire of all counsel, does the Court now have on file in the court all of these depositions?

Mr. Stoner: Your Honor, I was informed by the Clerk yesterday that the originals of all the depositions have been received in the Clerk's Office.

Judge Robinson: Yes, I understand. We will take care of that. I just wanted to make certain.

Judge Waddy: We were short of one yesterday, Madam Clerk.

The Deputy Clerk: They are all on as far as the docket sheet is concerned.

Judge Waddy: You did find that one that you couldn't locate?

The Deputy Clerk: Yes, sir. There are eight of them in all.

Judge Robinson: To put all counsel at ease, a check has been made. Everything that has been filed is available to the Court.

All right, Mr. Shurtliff, do we arrive at Exhibit 31 [757] again at this point or do you have something else?

Mr. Shurtliff: I believe that we do. Your Honor.

Judge Robinson: All right. Let me inquire of Mr. Treese and Mr. Stoner. Gentlemen, have you had an opportunity to look at that?

Mr. Treese: Yes, Your Honor.

Judge Robinson: At that publication?

Mr. Treese: Yes, although not in great depth. But the first thing that catches our eye is that it was published in

March of 1961. Apparently it was proposed by a Louis E. Neuman with assistance provided by Bruce J. Borrello. I have been unable to locate anyone who has any knowledge of those gentlemen. Because of the date of the publication, we would hold it completely—we would urge this Court to consider it completely irrelevant.

Mr. Treese: March of 1961.

Judge Robinson: You say 1961?

Judge Robinson: I understood earlier today that this is a historical treatment of some sort.

Mr. Treese: It is in substantial part, Your Honor, without question. But it comes to conclusions and states opinions and it is——

Judge Robinson: We are not being requested to give any consideration at all to matters of conclusion or opinion.

Mr. Treese: Frankly, Your Honor, we just have not [758] had the time to totally review it. It is a 70-page document based on facts prior to 1961. There is substantial statistical——

Judge Robinson: We will give you that opportunity. You certainly are entitled to that.

Mr. Treese: We stand on our position, Your Honor. We will continue to objection even after we study it.

Judge Robinson: Well, we will reserve our decision on both. You are objecting to admissibility and not weight?

Mr. Treese: Certainly.

Judge Robinson: But, gentlemen, it is awfully difficult for us to make a ruling without having seen the document. So, we have other things to be decided in this case. I think you can rest with assurance that we will decide this along with everything else before the case is finally completed.

Mr. Halpin: If it may please the Court, our position with respect to this document is that we would just like to have it available to the Court as a published document which is not generally available and, if allowed in the record as a proffer, will be at least in the Court's library.

Judge Robinson: Mr. Treese?

Mr. Treese: Yes, agreeable.

Judge Robinson: In pondering this case, if I felt a need to know more about the history of voting in the City of New Orleans, why couldn't I go to a library and, assuming that [759] such an historical work is available, why couldn't I examine it?

Mr. Treese: I can rely on Mr. Halpin's previous remark that it is not generally available and he wants it in the court file. This organization is not a quasi-public organization that it was represented to be earlier. It is a private organization.

Judge Waddy: Suppose any author prepared a book and we wanted to look at it from an historical standpoint. Wouldn't we have a right to do so?

Mr. Treese: I am sure you would, Your Honor.

Judge Robinson: And we are accustomd to, I think, making pretty valid judgments as to how much weight should be given to something, and counsel for the government has made it plain that matters of opinion, conclusion, interpretation and that sort of thing are not the object of this proffer. It is being tendered simply for the factual information that it contains.

Mr. Treese: May I make this request in light of what the Court has just stated? May we contact the publishers and the authors of this document to ascertain whether a more current or an updated version of this is available, and may we also have the opportunity of perhaps deposing the authors as to some of the facts that they have uncovered in here? I am not saying we are going to do this, but if the Court would [760] grant us a fixed number of days within which to accomplish this task, we would appreciate it.

Judge Robinson: We will do that. I think that under the circumstances, since you have not had the opportunity of thoroughly examining 70 pages, if you run across some other histories of the City of New Orleans and you wanted to lodge them with the Court for its edification, that the Court would not object. Personally, I want all the light that I can get on the subject before this case is decided.

How much time do you want for that purpose, Mr. Treese?

Mr. Treese: May we have ten days?

Judge Robinson: Oh, certainly.

Mr. Treese: Thank you.

Judge Robinson: Would you advise us as to how you come out on that? I mean by that so that we will know whether we need to hold matters any longer on that account.

Mr. Treese: Yes, sir.

Judge Robinson: All right, gentlemen, so much for Exhibit 31.

Now, I take it that you gentlemen want to submit argument to the Court. The Court is expecting it anyway.

Mr. Stoner: Yes. My only hesitation, Your Honor, was that you had previously mentioned that the Court would be asking for briefs.

[761] Judge Robinson: Yes.

Mr. Stoner: I was wondering if maybe oral argument might not be more valuable after the submission rather than prior to.

Judge Robinson: Absolutely. Our view on the matter is that a case of this magnitude and importance ought to be thoroughly and carefully briefed. We shall give you on opportunity to file your briefs. If any of you gentlemen want to orally argue the case, personally I would welcome it. We would set a date and have you come back and present your arguments at that time which certainly, I think, would be much more meaningful to everybody concerned.

It might be helpful if we took a brief recess to permit you gentlemen to confer amongst yourselves as to how much time you might want and maybe to work out a little informal briefing schedule of your own. You must bear in mind that before you can do the job capably, you are going to have to wait on the transcripts, and at the moment I don't know exactly how much time they are going to take.

I think you can get it done a lot better and a lot faster than simply by moving from counsel to counsel.

Do you want to file simultaneous briefs or do you want the briefs filed in series? For example, briefs for the plaintiffs first, then for the government, then perhaps for the intervenors, with provision for replies and that type of [762-766] thing?

I would think, gentlemen, that ten minutes ought to be sufficient to enable you to do that.

In the meanwhile, while that is going on, the Court itself will investigate to the extent to which it is able to try to find out how soon transcripts can be made available to counsel and to the Court.

Mr. Marshal, at this point the Court will stand in recess for ten minutes.

(Whereupon, at 2:58 o'clock p.m., a short recess was taken.)

[767] AFTER RECESS

Judge Robinson: It is our understanding that counsel have already been advised that the transcripts of the entire trial including today's proceedings will be available on Tuesday.

Gentlemen, have you managed to work something out? Are you the spokesman, Mr. Stoner?

Mr. Stoner: May it please the Court, we have conferred. I don't know that we are in agreement. We will submit our proposal to the Court.

Our proposal was that all parties file simultaneous briefs within thirty days, and that thereafter each party be given fifteen days to answer the original brief, and to file a reply to the brief of the other parties.

Judge Robinson: All right, sir. Mr. Shurtliff.

Mr. Shurtliff: May it please the Court, it was the Government's judgment that the best way to proceed would be for the plaintiffs as the party with the burden to file a brief, a somewhat lesser time for the Government to respond and file its brief in chief, and some time thereafter for plaintiffs to respond to the Government's brief.

Judge Robinson: That method, of course does have an advantage. In terms of this case, however, it has a disadvantage. I suppose the suggestion made on behalf of the plaintiffs was calculated to save as much time as possible. [768] Is that correct, gentlemen?

Attorneys: Yes.

Judge Robinson: And usually simultaneous briefs are calculated in that direction, and sometimes they do, and sometimes they don't.

All right. Do you have a view on this, Mr. Halpin?

Mr. Halpin: Yes, Your Honor. We, of course, are also of the position that things should be expedited. The elections in New Orleans have been enjoined, and the present councilmen remain in office until.

However, we feel that a series of briefs would be more appropriate and that it would not take more time.

The schedule suggested by Mr. Stoner is thirty, and fifteen, which would be forty-five. I see no reason why we couldn't have the plaintiffs file their brief within say twenty-five days.

We could respond within ten, and the plaintiffs could reply with another five, which would still have us at the forty-five day period, which I think would expedite matters.

I think it would be more appropriate to understand since the plaintiffs do have the burden of proof exactly what they alleged have proved in this case.

Judge Robinson: If, Mr. Halpin——

Mr. Halpin: Yes, sir.

Judge Robinson: —we adopted the suggestion made [769] by the Government, and by you, and gave the plaintiffs the full thirty days, since they carry the burden of proof to make their initial filing, it is my understanding that you could have your brief in within ten days from the time the plaintiff files?

Mr. Halpin: Yes, Your Honor, we could.

Judge Robinson: All right. How much time would it take the Government if we move to a series type filing instead of a simultaneous filing, Mr. Shurtliff?

Mr. Shurtliff: We could respond within ten. I would suggest that from my point of view that twenty-five days for plaintiffs and fifteen for the response, and ten for the reply, would bring us to fifty.

Judge Robinson: Twenty-five, fifteen and ten.

Mr. Shurtliff: To fifty days.

Judge Robinson: Where does that leave you, Mr. Stoner? We are talking about a difference of five days.

Mr. Stoner: Your Honor, my original thinking in asking for simultaneous briefs is that this is a brief that is being filed immediately following the trial.

Now all of the parties have heard the testimony. They know the testimony. It is all available to everyone, and it would seem to us that the filing of simultaneous briefs puts everybody to work on this case and keeps them working right now, and in our opinion the Government and the intervenors have an adequate opportunity to comment, and discuss, and [770] present to the Court their arguments with respect to the evidence that has been submitted here to this trial, and we really believe that there is more probative value in the briefs by calling for simultaneous briefs.

Judge Robinson: Well, as I indicated earlier——

Mr. Stoner: The tendency seriatim is for the other party merely to sit back and throw darts, if I may say, in the plaintiffs' brief, and as opposed to taking the broad view of all the testimony in evidence that has been adduced at the trial.

Judge Robinson: In the Court of Appeals we have the filings both ways. The usual method is to have them filed in series. However, when we run into a situation in which we really want to expedite consideration and decision, we frequently go to simultaneous briefs, so there are advantages and there are disadvantages.

In terms of total time, I can only see two consequences, two differences rather, between the procedure you advocate and that suggested by the Government and by the intervenors.

Your initial filing period will be twenty-five days rather than thirty, and the overall filing period would be fifty days instead of forty-five.

Well, gentlemen, let me confer with my colleagues and see what their wishes are in that regard.

[771] (Judge Robinson conferring with Judges Waddy and Corcoran.)

Judge Robinson: Gentlemen, the Court has conferred. I might say to you that I don't think in any event the differences are very great. We have come up with a timetable, Mr. Stoner, that is within ten days of yours, and at the same time preserves the benefits that counsel for the Government and the intervenors are trying to preserve, and also would accord the unanimous preference of the Court to have these briefs filed in series.

This case certainly deserves all the expedition the Court can give it. There is no doubt about it, and the way the Court has proceeded in this case, I think it would demonstrate to all concerned that the Court has spent every possible effort to expedite this case as much as possible.

At the same time, this Court, as all other Courts, is concerned about the quality of its product and there is one other circumstance in this case that may not obtain in the ordinary run of litigation, and that is, of course, the magnitude of the burden that plaintiffs carry in this case.

It is, of course, a little difficult to write a brief for the defendant when the defendant is not quite as certain as to just how the plaintiffs in the case would undertake to discharge that burden.

[772] We have decided, gentlemen, that the allotments will be of this fashion:

The plaintiffs will be permitted the thirty days, the full thirty days, from the availability of the transcript within which to file the brief on behalf of the plaintiffs, that is the opening brief.

The defendant and the intervenors will be indulged fifteen days following the filing of the plaintiffs' brief within which to file their respective briefs. The plaintiffs will

then be indulged ten days from the date of the filing of the latter of either the Government's brief and the intervenor's brief, whichever comes last, to file their reply briefs.

The outside limits in this regard, gentlemen, as you will immediately see, the outside limit is fifty-five days, and if somebody makes an earlier filing, it means it will be just to that extent shortened.

I would like to suggest to council that if you have specific findings of fact or conclusions of law that you wish to propose to the Court, please incorporate that as a part of your submission.

I will also call attention to the fact that the Court still has pending before it one unresolved issue, and that is the issue presented by the intervenors on which this morning the Court's ruling was reserved, and there is a possibility that some adjustments in this regard might have to be [773] made dependent upon whether counsel for the plaintiffs decide that they need to take further depositions in connection with Exhibit 31 which was turned in to the Court yesterday.

I want to be perfectly clear about this in case I haven't been on behalf of the Court. If the plaintiffs file in less than thirty days, the time for the defendant and the intervenors to file will begin to run that much faster, and so also, gentlemen, if they don't use their full fifteen days, for the filing of their briefs, your time on filing reply briefs will be shortened.

The final matter is the question of oral argument. It is the view of the Court that a date for oral argument can best be set after you gentlemen file.

Now once you get your filings completed, we of course, will need a reasonable amount of time to review all materials in this case in order to get prepared for oral argument.

You will have the assurance of the Court that we would fix the date for oral argument as expeditiously as circumstances including other work of the members of the panel will permit.

Is there anything further, gentlemen, before the Court concludes this phase of this litigation?

Mr. Stoner: Your Honor, I would have one inquiry of the Court, and that is whether or not the Court would [774] contemplate awaiting a ruling on Mr. Halpin's request of yesterday which the Court reserved a ruling this morning.

Will the Court reserve a ruling on that issue until all the briefs are in and until the whole matter is submitted as a whole?

Judge Robinson: Yes.

Mr. Stoner: Or would the Court contemplate ruling on that in the interim period?

Judge Robinson: What I was trying to convey a few minutes ago and when I mentioned it is you gentlemen would present your written arguments as a part of the written submissions you will make, and you, of course, will have opportunity at oral argument when that day arrives to address yourselves, orally, to it, which means, of course, that we will be deciding that when in all probability we decide the rest of the case.

Mr. Stoner: Thank you.

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Deposition of Mr. Joseph V. Di Rosa

October 5, 1973

[1] Deposition of Mr. Joseph V. Di Rosa, taken in the above entitled cause, before Howard E. Stumpf, an Official Court Reporter, authorized to administer oaths of witnesses pursuant to Section 961.1 of Title 13 of the Louisiana Revised Statutes of 1950, as amended, pursuant to the following stipulation, given in Suite 2 W 23, City Attorney's office, City [2] Hall, 1300 Perdido Street, New Orleans, Louisiana 70112, on the 5th day of October, 1973.

Appearances:

Stoner, Treese & Ruffner
(By: James R. Stoner, Esq.)
For the Plaintiffs (New Orleans City Council)
Nathaniel Friends, Esq.
and
M. Karl Shurtliff, Esq.
For the Department of Justice
United States of America
Kidd, Katz & Halpin
(By: Stanley A. Halpin, Jr., Esq.)
Johnny Jackson, et al

Reported by:
Howard E. Stumpf,
Official Court Reporter

[3] STIPULATION

It is stipulated and agreed that the testimony of Mr. Joseph V. Di Rosa is hereby being taken pursuant to the Federal Rules of Civil Procedure for purposes of discovery. The formalities of signing, sealing and certification are waived. All objections, except those as to the form of the question, are reserved until the time of the trial of the cause.

Mr. Joseph V. Di Rosa, Room 2 E 09, City Hall, 1300 Perdido Street, New Orleans, Louisiana 70112, a witness named in the above stipulation, being first duly sworn in the cause, testified on his oath as follows:

By Mr. Shurtliff:

Q. Would you state your name for us, Sir? A. Name is Joseph V. Di Rosa.

Q. And your occupation, Sir? A. I'm an attorney-certified public accountant and Councilman. You want to put all those things?

Q. How much time do you spend in your [4] Councilmanic duties, Sir? A. You know these Councilman is supposed to be part-time, but it's one of the jobs where you can spend no time or all day depending more or less on how conscientious you are. I would say I would spend more than three-quarters of my time here I would guess.

Q. How long have you held that office? A. I'm in my eighth year.

Q. You've been elected twice previously? A. I was elected once, lost once and came back again.

Q. Which district do you represent, Sir? A. I'm city-wide. I'm at large.

Q. Did you ever represent a district? A. Not as such. I was at large before I lost at large to Moon, and I won now at large.

Q. And you're referring to you lost to Moon Landrieu? A. Right.

Q. What year was that, Sir? A. '66 I think it was.

Q. So you were first elected in '62? [5] A. '62, right.

Q. Defeated in '66— A. Right.

Q. —and re-elected in '70? A. Right.

Q. In 1962 when you first ran how many candidates were there for the at-large post? A. I think there were nine.

Q. Was there a runoff? A. Yes.

Q. Were you in the runoff? A. Right. There were four of us in the runoff.

Q. And by that I take it that nobody won a majority in the first? A. That's right.

Q. So four candidates ran in the runoff to select two who subsequently won? A. Right.

Q. Who else won in that runoff election? A. Fitzmorris, Fitzmorris and I. Landrieu and Eddie Price were defeated. Price ran third and Landrieu fourth.

Q. Do you recall what percentage of the vote you received from that election? [6] A. No, I really don't.

Q. In '66 how many candidates were there for the at-large post? A. I think about, let me see, '66, I don't remember offhand, but I would guess about the same number, maybe a few more. I don't know, but about nine. But I'm guessing.

Q. Certainly. Was there a runoff that year? A. Yes. There was a runoff between Landrieu and I. That was in the '66 election.

Q. So one person was elected— A. Right.

Q. —in the first primary? A. Right.

Q. Who was that? A. Fitzmorris. No. That wasn't Fitzmorris. That was Pitre, John Pitre, because Fitzmorris ran for mayor that time.

Q. In 1970 how many candidates were there for the at-large post? A. I'm trying to think, but I don't really remember, but same thing happened. There was a runoff there. Moreau was elected. Moreau ran on several of the [7] tickets, on Landrieu's ticket also, and he was elected in the first primary. I missed the first primary by 1500 votes, and I won in the second primary against Morial.

Q. What was Mr. Morial's race? A. Black.

Q. Was he the only black in the field for the at-large post? A. I don't remember if he was, no. Gee I don't remember. I really don't.

Q. Did you run second in the first primary? A. Yes.

Q. Mr. Morial run third? A. Right.

Q. In the at-large elections were there two seats to be filled, Councilman Di Rosa? Is there a full slate requirement? A. In what way a full slate?

Q. Do voters have to vote for two? A. Yes.

Q. And what happens if they only vote for one candidate? A. The vote is void.

Q. And has this been the case in all of the [8] elections that you participated in? A. Since the Charter was first instituted. That was in 1952.

Q. And there's always been a majority runoff requirement? A. Yes, right.

Q. As a political candidate how do you campaign with the full slate, by that I mean voters have to vote for, what do you tell your supporters? A. Actually what you did each one runs on his own. That's in effect what happens, and I ran as an independent each time I was on some ticket but not well some tickets you're on, some tickets you were not on, and that's in effect how you run. From a practical standpoint you run as an independent and you're elected. That way each guy runs on his own. Every candidate runs on his own. See there's no teaming up as such in most instances. If you're on one ticket, for example I was on Guste's ticket I believe with Morial. So we used to go together, and you talk for yourself in each of the instances, and tell them to remember you have to vote for two, me and somebody else.

Q. Now let me ask you. What do you tell your wife? Do you tell your wife to vote for you and a weak candidate?

Mr. Stoner: I object to that question. I object to the question. I think it's highly personal matter.

By Mr. Shurtliff:

Q. Your objection is noted. Mr. Di Rosa? A. You want me to answer that?

Q. Certainly. A. You mean what did I tell my wife? To be frank I never tell her anything. If she votes I just

hope she votes for me, and at times she comes out and says I don't even know whether I'm going to vote for you, if you want to know the truth.

Q. As a practical matter do candidates that are running for the at-large seats encourage their supporters to vote for [10] them and a weak candidate? A. No. It's imposition to be frank with you. I'll tell you why. I tell you that from my standpoint because you're too interested in trying to get yourself. You know it's pretty much an imposition to expect to tell somebody to vote for me and somebody else. You're doing enough when you ask them to vote for you, and in many instances if you attempt to do that you run a pretty good chance of losing your own vote. In fact, to be frank with you, that's one of the ways I lost in 1966, because I was trying to help a district councilman, and one of the black preachers was with me at the time, and he went against me and the other guy, too, because I pressed him, tried to get them to vote for a district councilman who was on the council with us at the time.

Q. You mentioned ticketing, Councilman Di Rosa, on various tickets, or what is that process? [11] A. That process is that some mayoralty condidates will get together and try to form what he considers a team, and he gets the two Councilmen-at-large, the District Councilmen race, some of the parochial offices and whatever else happens to be running at the time. The main purpose or one of the big purposes for it is to try to reduce the cost of the election by contributing a part to the general operation of the whole campaign. See first you have to be selected on his ticket, and second you pay for some of the expenses attributable to the campaign, mailing ballots, sample ballots, things of that nature.

Q. How does the selection process take place? A. It's mostly in his mind as far as candidate is concerned. I'm talking about the mayoralty candidates. I couldn't tell you, some factors go into it, some don't. I don't know what

they use as a basis. I guess they look at your voters' appeal and [12] see if there's any possibility in getting you with them on that basis.

Q. You indicate that you were on Mr. Guste's ticket? A. Yes, Sir.

Q. What was Mr. Guste running for? A. Mayor. Judge Gertler also, he ran for mayor.

Q. Are there other organizations or individuals that put tickets together other than candidates for mayor? A. Yes. There are hundreds of them. They have so many of them that it's almost an impractical problem to attempt to pay the cost of ballots and things that go into the canvassing. It's almost gotten, in fact it has gotten out of hand completely.

Q. You say hundreds. How long have there been hundreds? A. Well that's an exaggeration—

Q. Certainly, I understand. A. —but I would say, oh I say each year it starts to get worse, not only every four years but each year the election [13] comes. Every election that they have a new group seems to form you know to start politicking or campaigning.

Q. In 1962 how many organizations were there, could you estimate, that were engaged in that? A. '62?

Q. Of '62. A. I guess there were about 15, 20 major ones that you would call. You know one of them was the OPPVL that you're talking about, we're talking about; CCPL. That's one run by Chink Henry. OPPVL is Reverend Davis.

Q. Is Reverend Davis black? A. Yes, Sir.

Q. Mr. Henry black? A. Right.

Q. Were there any other large predominant organizations? A. Well the Old Regulars, that's one; organization they had what they call CCDA. That's Crescent City Democratic Association. Those two are white.

Q. Right. [14] A. And then they had, I don't know if the other one was started at that time, they had two other black organizations that were fragmented, but they've

joined together since. Some of them have and some of them have been separated.

Q. Was there a Regular Democratic Organization? A. Yes.

Q. That was known as RDO? A. Right.

Q. Was it white or black organization? A. White.

Q. And when you say white organization or a black organization, Councilman, what do you mean by that? A. The members are predominantly white or predominantly black.

Q. Does that hold true today with this proliferation of the organizations? Are memberships of those organizations predominantly black or white? A. It holds more true in the white than in the black. The black is predominantly black or almost exclusively black, and [15] the white is sort of assimilous group, you know mixture of both.

Q. Is the RDO still extant? A. No. It's still in existence, yes.

Q. Is it predominantly white or black? A. Yes, it's predominantly white.

Q. Does it have the weight that it used to? A. No.

Q. Do any of them? A. I doubt it, and the reason I say that is because when you have what they call ward meetings or precinct meetings you know you usually see a very small turnout. People just don't seem to be as interested in elections as they were at other times. I guess there's too much other entertainment.

Q. Was politics a form of entertainment in your lifetime in New Orleans? A. It was a form of entertainment all over the country I believe insofar as even from the standpoint that it was something to do, a place to get out or joining together of people to meet each other and see each other. You [16] know they didn't have the television or radio factors, but people were looking for an occasion to get out, and that gave them that.

Q. Did they have ward headquarters here? A. Yes.

Q. Ward community center as such? A. Yes, wards, precincts, things like that.

Q. Do they still have? A. Yes.

Q. What goes on at those, how often do they meet at the community centers or ward headquarters? A. At election time they try to keep them open as much as they can to try and encourage voters to call people, really in general to get a movement on the part of the people to move for whatever candidates they seem to be espousing the caues of.

Q. In 1970 you ran against Mr. Morial in the runoff election. Is that correct? A. Yes, that's right.

Q. What were the major issues in the runoff election? [17] A. None at all really. We didn't have any other than we had in the beginning, questions of the City, what you could do, experience, background, education. That's the only thing I stressed in mine.

Q. What percentage of the vote did you receive in the runoff election, do you recall? A. About 52 I would guess.

Q. Do you believe that Mr. Morial's race played a part in that election? A. I think it played a part in him getting the vote that he got, yes. I think there's more of a tendency on the part of the blacks to vote as a group than it is on the part of the whites.

Q. You believe that to be the case? A. Yes.

Q. Do you believe it to still be the case? A. Yes.

Q. What do you base that conclusion on, Councilman? A. Oh nothing but speculation.

Q. Did you analyze the results? A. Yes, some results. For example, that they [18] were totally black you might get something like 386 votes to 2. I think that would give you some indication that that might be a block vote.

Q. How about the white precincts? A. I had none that went that way. In fact my own precinct that runs roughly around 450 votes where I live I only won it by 65, and that's predominantly white.

Q. Have you observed this block voting in other elections? A. Yes. I think it's a matter of fact I think.

Q. Could you recite some of the elections that you believe that black voting has occurred in? A. I think in almost all the elections I know of none where it has not, to be frank with you.

Q. And it's your opinion that it's more in the black community than— A. Right.

Q.—than in the white? A. Right.

[19] Q. Do you have an opinion as to the underlying cause of that block vote? A. No, I don't.

Q. How about in other elections other than for election of candidates, say on referendum elections or other constitutional amendments— A. Yes, Sir.

Q. —for instance is there block voting? A. It's pronounced to some extent, but not quite as much I don't believe.

Q. Let me jump ahead. A. To be frank, what happens in most of those constitutional elections people get all disgusted with voting so much and so many and just don't vote at all, have a tendency to vote against them.

Q. The issue of increasing the size of the City Council was put to the people in the form of a referendum this last year? A. (Witness nodded affirmatively).

Q. Do you believe that block voting played a part in those elections? A. I think they did.

[20] Q. And how so, Sir? A. I think it did only in the sense that the cause of increasing was espoused more by the certain groups, but they, no, that's not so come to think of it because they did have a group, in fact it was espoused even by the papers, the increase you know. So you couldn't put it necessarily as a block as such. No, I couldn't say that in this instance.

Q. How about the results though? A. Well same thing, result was mixed, and the vote was light.

Q. Other than the newspapers do you know the names of any white organizations that supported the proposal besides the City Council? A. I think most of them came out for it as I recall. I don't remember offhand. I couldn't tell you to be frank with you.

Q. Were you in favor of that proposal? A. No, I was not.

Q. Did you speak out in opposition to that? [21] A. No. I just let it go. I spoke out on the Council, and the reason for it is that I believe in a Metropolitan Government, and I was trying to join the two parishes together, Orleans and Jefferson. We have five districts and two at-large, and so do they. My proposal was that they put the two parishes together, see with the five district councilmen, two at-large of that, Parish President as the President of both groups and the Mayor as the President of the whole thing, just as they're doing in Atlanta, Dallas, Houston, trying to make some sort of a Metropolitan Government. I think from a financial standpoint it's something that will come and has to come.

Q. Do you know of any of the councilmen, present incumbent councilmen that spoke out in favor of increasing the size of the City Council? A. I couldn't speak for the rest of them, whether they spoke out for it, but they had enough votes to pass it.

[22] Q. Are you familiar with any of them taking a public stand in favor of the proposition? A. Well you take a public stand when you vote for it or against it.

Q. Other than that expression? A. I don't know whether they went out and actually knocked on doors or anything of that sort. I couldn't tell you. I didn't either for or against it. I did speak out on the Council when it came up for a vote, and at that time I stated the reasons that I just mentioned now, and then let it go at that.

Q. Are you familiar with any organizations that were opposed to the Council extension? A. No, not that I know of. I never paid that much attention to it or interest in it.

Q. Was there much interest in it? A. Well they had enough votes in it. I tell you during the elections if you got too many people voting on too many things the people get disgusted by [23] the time they get to the bottom.

Q. Do you think that's what happened? A. I think it was. It would have been defeated by a larger vote if it had not.

Q. If there would have been fewer proposals on the ballot? A. Right. That's my personal opinion of course. A lot of the opposition was built on the increase in costs you know by some of the people that were opposed to it.

Q. Cost of more members? A. More councilmen, more all the other things that go into it, keeping them moving or keeping the office operating.

Q. Councilman Di Rosa, the question of the redistricting has been the subject of consideration by the Council now for something on two years I expect? A. That's right.

Q. At the time that the Council first became interested in redistricting could you indicate what they did? A. What we did at that time?

Q. Yes. [24] A. Sure. At the time we first became, in fact we have to by Charter. You know according to the Charter every ten years we must redistrict. There's no if, and or but, but you must redistrict. So we wait for the returns to come in on the census. After the census comes in by blocks, which is called as I understand the fourth reading or the final figures, we then go in and apportion in accordance with what we believe to be the Supreme Court's decision, one man, one vote. That is 119,000 I heard I think it was per district. So we have to get the five districts in that order. One of the problems we had was with Algiers you know the representation at that time. So we had to increase some districts and reduce others. So we though at that time that if they put Algiers into three districts and gave three councilmen those districts, that they would be more responsive to the people in Algiers and they would [25] have more representation for one thing since that had to be broken, at least that was my thinking, and, of course, I'm not attempting to speak for the others because I couldn't tell you what their reasoning was. But we did it at that time, and according

to law we sent it up to the Justice Department. They sent it back saying they believe this is discriminating, but that's all, never give us any other guidelines or any other reasons. Had they come up at that time we ought to go east-west and not north-south and follow the historic boundaries, we would have gone to court at that time. But in the meantime I think you know the sequence of events. Then we went to the proposed 11-man council and then to the 9-man council, and then went back to another redistricting plan. That's plan that we have is presently before the court now that was done on the same basis that we believed to be the guidelines as set [26] out by the Federal Government, Supreme Court I'm speaking of, and their guidelines was that you follow historic boundaries, you follow natural boundaries and you know that's one of the reasons instead of putting, instead of saying they belong as a group, and of course the number 119,000 or one-fifth each, even though we knew the Supreme Court had allowed variants of as much as humanly possible because of the outlines in the Charter that were set out in 1952 that said every ten years we have to redistrict. It was quite obvious that we needed some definite guidelines when the Federal Government, the Justice Department came out and said that we redistrict on the basis of east-west configuration. Well we thought that was absolutely ridiculous because the Fifth Circuit Court of Appeals had held that the configuration should follow, and so did the Supreme Court as I understand, north-south [27] boundaries, follow the historic boundaries. Now we have had wards since 1902 with the same outline. Assessors run from wards. Everything is set up on a ward basis, and that's one of the reasons we went into that type of configuration that we went into at this time. Now I wouldn't doubt that there might be over 5,000 different variations of that that you have to make. As I understand the Supreme Court decision is to the effect that the decision should be made by the bodies that have to make it, elected

to do so, and that's us, and unless you can, as I understand it, show that something was done that was intended to in some way discriminate against anybody that it would be allowed.

Q. You mentioned that assessors run from wards. Councilman DiRosa, is it not true that they run from combination of wards? A. But the ward boundaries is what follows the [28] outlines.

Q. You also mentioned the Fifth Circuit decision or decisions relative to Senators? A. The Senatorial race was held on the northsouth configuration and to a great extent followed almost exactly what we have.

Q. And the Supreme Court decision to which you referred was what, Sir? A. Well I don't know the citation.

Q. It's not concerned specifically with New Orleans. Is that correct? A. Right.

Q. How about the United States District Court opinion from the Middle District of Louisiana, Judge West's decision, respecting the House of Representatives? Did you consider that? A. No. I undestand that was not appealed.

Q. Did you consider that opinion? A. Did we consider the opinion? Well we considered the Court of Appeal more than we did the District Court.

Q. Why is that? [29] [A] Because it is a higher court and it has more jurisdiction over the others. I think that's basic law, isn't it? It's like taking the Supreme Court over the District Court. We have to consider the Supreme Court rather than the District Court as I understand it.

Q. Are you familiar with the Judge West order respecting the districting the House of Representatives for Orleans Parish? A. Yes.

Q. Does it follow quote "traditional" unquote configuration? A. To some extent it does.

Q. To some extent it does not? A. I think so. I couldn't tell you specifically which ones do and which ones do not. But, as I said, it was not appealed and I con-

sidered that as really a final judgment of the court as such.

Q. Do you think that that judgment was erroneous in the way that it divided the Parish of Orleans for those House districts? A. Well I'm not one to figure, to say one way [30] or the other. The court decided that as far as the decision, and the election was held on that basis. I think that the one that came closer to us is the one that had just about the same amount of members as they do in the Senatorial race, and we paid more attention to that one than we did to any other. At least I did. I'm speaking for myself now.

Q. Did you study Judge West's decision as it respected the Senatorial district as well as the Fifth Circuit's decision? A. Yes.

Q. In your judgment Fifth Circuit result was the better? A. That's right, because it followed more closely the Supreme Court's decision, historic boundaries, wards, precincts, things of that nature.

Q. Who drew the first plan of redistricting, Councilman Di Rosa? A. The staff did, and as I recall we discussed all the plans. See during that time I don't really remember how many plans [31] they had, but there must have been as many as 20 or 30, maybe more.

Q. Did you or other members of the Council indicate to the staff what factors, what consideration should be taken into account in drawing the proposed plan? A. The only ones we took is the fact that they ought to have the same population, 110,000 I think it was. We tried to keep it as close to that figure as was possible.

Q. Did you yourself indicate that was a consideration to the population? A. To keep it within the population, certainly. That's our Charter.

Q. Did you indicate to the staff any other factors? A. None at all.

Q. Do you know whether any of the other councilmen did? A. No. I really don't. In fact I don't think any of the others did, certainly not in the meeting that I attended.

Q. Do you know whether or not the staff was [32] told to draw plans that insured incumbent district councilmen would be in the same district? A. I never did, and I don't know of anybody else that did. You see it's almost, it gets pretty difficult to try to put two together because you start off not just with five citizens running for office. You sart off with five people in five districts and of necessity they're separated because of their being in each district. So in order to try to run one against the other. Unless they live close to the boundary lines it's almost impossible without gerrymandering, see? You follow what I'm saying?

Q. I think so. Is it not true that three of the incumbent district councilmen lived in the northwest, what we would call the northwest corner of Orleans Parish or the City of New Orleans? A. I don't know if you'd call that the northwest. I don't know where, let me put it this way. There are probably [33] some, like the two at-large. Of course, according to our law, the two at-large could live right next-door to each other. We have no basis for that. We don't try to elect on the basis of where they live, but what the qualifications seem to be. Whether a district councilman some of them might run against each other, as I tell you, because of the basic hypothesis that you start off with where you got five different districts you see. Automatically they're separated immediately when you start off. So, as I tell you, unless they live together, close to ward boundaries or close to the boundaries as we have them set out, you know where the wards have been set out for years, it's impossible to bring them together.

Q. Well in your judgment is it not possible to draw district boundary lines, I would say such as that would put those three, at least those three incumbent councilmen in the same district and [34] maintain a one man, one vote equality as required by the Federal Constitution and by the City Charter? A. I guess it's possible to draw 10,000 variations, but who makes the decision? That's I think one of the factors.

Q. Weren't these plans such as that considered by the Council to your knowledge?A. Yes.

Q. And do you know why they were not looked upon with favor or at least the other proposals were looked upon with more favor? A. So far as I was concerned it was because of the gerrymandering that had to happen in order to do that.

Q. What is your definition of gerrymandering, Sir? A. That's where they try to bring in districts you know turn around corners and go around the middle of block or something of that sort to break up neighborhoods and things of that nature without following historic boundaries, that is wards, precincts, [35] canals, roadways, things of that nature.

Q. Are there any other things other than those you just mentioned that you considered to be historic boundaries? A. Not that I can remember offhand.

Q. Why are wards historic boundaries in your opinion? A. Because they've been established, as I tell you, since 1921 when the first constitution was enacted.

Q. Are precincts historic boundaries? A. Precincts are not necessarily historic boundaries as such because we do vary them. If they get too large we try to cut them down so that they're more manageable from a voting standpoint and they take less machines, and the people don't have to wait as long to vote. So they are historic boundaries in the sense that they do come together to form the wards.

Q. I believe you mentioned highways, did you not, as a historic boundary? [36] A. If it follows precinct lines, yes. That's to try to keep people from running across highways, if possible, in order to vote.

Q. Are there other historic boundaries? A. Usually highways like that do form precinct lines.

Q. How about I-10? Does it follow precinct lines? A. Not that I know of.

Q. Is it in your opinion a historic boundary? A. Not

now. It's too new. It's not even finished. Was it a factor in the I-10?

Q. (Counsel nodded affirmatively). A. Not to my knowledge. Not for me it isn't.

Q. Is Canal Street a historic boundary? A. Canal Street separates the Third Ward from the Fourth Ward.

Q. Do you consider it a historic boundary? A. Well if you consider wards a boundary, historic boundary, as I do, then of necessity you would have to consider it.

Q. The City Charter was adopted in 1952, was it [37] not? A. That's right.

Q. Indicated that after each decennary census the Council would reapportion itself one man one vote? A. That's right.

Q. What is the meaning of that provision in light of the fact that even at that time the wards were varying with significant variance in the populations of the wards? A. But there was no change in the wards makeup of the Councilmanic districts, Sir. You see Councilmanic districts at that time up to this present time here followed ward lines.

Q. Exclusively? A. Right.

Q. Is it your judgment that framers of the Charter meant that in all future redistricting ward lines should be followed exclusively? A. Yes.

Q. How does that square with the proposition set out that you meet the one man one [38] vote? A. Squares with it pretty well I think.

Q. Is it possible to combine wards? A. It was up to this time. Now the Ninth Ward has gotten larger in itself, and it of necessity has to be split up to make one man one vote theory.

Q. Which takes precedence then in your judgment, the mandate to meet the one man one vote requirement or your judgment that the framers of the Charter meant that the traditional ward lines should be followed? A. Both. I think they're compatible.

Q. In the second redistricting plan, after the first plan was objected to by the Attorney General, what factors or considerations were taken into account for the drawing of that plan? Do you know, Sir? A. Same thing what I told you before, ward lines, historic boundaries, population. Those were the major factors as far as I was concerned.

Q. Any others that you know of? [39] A. Not offhand. I couldn't think of any at this time.

Q. Do you know of any other factors or considerations that other councilmen might have mentioned that they felt were important? A. Like what?

Mr. Stoner: I understand your question to be, did any other councilmen mention to you other factors that he may have considered? Is that the import of your question?

Mr. Shurtliff: Right, that he would consider, that he did consider.

The Witness: No, not other than what we did. We were just trying to get to 119,000 as close to that as possible and to follow the wards.

By Mr. Shurtliff:

Q. Did you take an active part in the actual drawing of a plan or plans, Councilman Di Rosa? [40] A. The staff did. We told them you know to draw the plans, and they came in with a number of plans, and then we discussed them all to see how they would fit in you know with total population, whether it came around with, whether it followed ward line, see that it didn't jut out, you know jut out in one district or maybe what we feel would break up like areas, neighborhoods. For example, we didn't attempt to break up neighborhoods. In fact we tried to keep them together within the same context of the wards and precincts boundaries.

Q. Why was that, Sir? A. So we wouldn't break them up. So they wouldn't be gerrymandered to any extent, to any extent at all, not to lose anybody's voting, black or white.

Q. What is the solution in your opinion? A. I guess it would be to put more in one district than in another. Draw it and let it fall where it falls. [41] That's what it amounts to.

Q. Where did these discussions take place on the plans? A. Oh gee, I guess we had no specific place. We met together in councilmanic offices and in groups. That's just with all of us, all that came when the meetings were held. I don't know of any specific instance in the Council chamber. Of course, we had people come before us to present plans for the hearings that we had.

Q. Did you ever participate in any discussions with other council members as to the specific relocation of the proposed lines from this area to this area? A. We all did, yes, we looked at it. We looked at the overall plan and see how it fits with the number of votes, whether it splits up neighborhoods. Of course, we directed the staff not to do that, not to split up neighborhoods, and, of course, the plans that were sent back did.

[42] Q. Were registration figures available at that time to the members of the Council? A. I understand that some of them were available. I don't know whether all of them, but I know the ones that were presented were made because I think your department asked for them.

Q. Were registration figures used in these meetings? Were they discussed at these meetings that you know of? A. I guess they were, but I don't remember any instance where it was. That's something that really didn't interest me too much, as much as the population breakdown was.

Q. Why was that, Sir? A. Well running at large I had no particular interest in the districts as such other than to see that they followed the same boundaries and didn't dilute, that is didn't gerrymander in one instance to try to break up neighborhoods and followed the historic boundaries, which I believed [43] to be the reasoning of the Supreme Court.

Q. You believed that district councilmen had more of a specific interest in a particular district boundary than you

did? A. I guess every district councilman has an interest in his district.

Q. Is it not true, Sir, that the specific location of district boundary lines and the adjustments of such boundary lines was left more particularly to the councilmen involved? A. Not to my knowledge.

Q. You indicated that public meetings were held on the question of redistricting? A. I think that's the law, yes.

Q. Did you attend those meetings? A. Positively. In fact I think I ran the meetings.

Q. And did members of the public attend those meetings? A. Yes.

Q. And expressed their opinion on the question—? [44] A. Yes.

Q. —of redistricting? A. That's right.

Q. What kind of persons or organizations were represented at those meetings? A. Well I guess just about everything in the City, everybody in the City. We had Chamber of Commerce, Public Affairs Research Council, Bureau of Research, number of people came and a number of individuals, too.

Q. What position did the Chamber of Commerce take on these? A. I don't remember specifically what position anybody took really.

Q. Were the members or spokesmen for black organizations at those meetings? A. Yes.

Q. And did they speak? A. Yes, they did.

Q. Do you recall what they spoke to or what position they took? A. Yes. Some of them spoke to 11-man Council. Some spoke to a 9-man Council and spoke to different types of redistrict- [45] ing, but all of them spoke on basis of the north-south redistricting.

Q. Do you recall which organization or which person spoke to an 11-man Council? A. No, not as such.

Mr. Stoner: Well I would suggest that the question should be identified as to time.

By Mr. Shurtliff:

Q. Let's say the first series of public meetings at the time of the first plan of redistricting was being considered. A. Some of the proposals, as I recall some of them did respond, but no specific group. As I recall I think there was a coalition of several groups that suggested one 11, another one suggested 9. Some suggested doing away with the at-large councilmen, but, of course, that's a matter of Charter change.

Q. Were those that spoke to an 11-member Council, were they talking about a 9-district, two at-large? [46] A. Yes.

Q. Do you recall any organization or any person speaking on the question of or the proposition of 11 single-member districts? A. Yes.

Q. Do you recall who and what? A. No. I don't remember who they were.

Q. That would involve a Charter change. Is that correct? A. All of them would have involved Charter change.

Q. Subsequently the Council did enact ordinance calling for— A. A referendum.

Q. —referendum on proposed charter amendment dealing with a 9-districts, 2 at-large and a 7-district, 2 at-large plan? A. Right.

Q. Was any ordinance ever proposed to amend the Charter to provide for an 11 single-member district plan? A. No.

Q. Do you know why it was not? [47] A. We just didn't think it would work that way, see, because in order to do that you had to change more sections of the Charter than just the parts that redistribute because if you did that there would be a question then of which one would be elected as the Council President and have the corresponding duties that they have, that is, that they have Ex-Officio to serve on different boards and agencies. For example, the two Councilmen-at-large serve on the Sewerage & Water Board. That section would have had to be changed or the Sewerage & Water Board law would have had to be changed that created the 2-man Council-at-large districts. Two of the Councilmen-at-large serve on the Board of Liquidation of City

Debt. That's a constitutionally created body. The State Constitution would have had to be changed in order to make that provision so that there wouldn't be any two Councilmen-at-large, and it would be a question of which [48] two councilmen would serve on that Board and sever the use of two Councilmen-at-large. I don't remember offhand, of the other boards and commissions, but it would have necessitated changes not only in the Charter of the City but in the State Constitution as well.

Q. Did the inauguration of the two at-large City Councilmen in 1952 require constitutional changes? A. It made provision in the Sewerage & Water Board and in the Board of Liquidation of City Debt to allow those two to sit on those commissions, yes.

Q. The ordinance calling for seven single districts and two at-large and the nine single districts and two at-large were passed at or about the same time. Is that not correct, Sir? A. No. The 11-man was passed, that is put to a referendum of the people, and when it failed, then the 9-man was put to the people, and when it failed then we went back.

[49] Q. But initially the ordinance called for these hanges by the City Council passed about the same time. Is that not correct? A. Yes. We had one 11 and another 9 both put up.

Q. And they called for election on the same date on those two? A. Right. And the Mayor vetoed one, and his veto was upheld.

Q. But at the time of passage of those two ordinances calling for the election on the same date on those two questions, was the question of passage of both of them considered by the City Council? A. Yes, but it became moot because the Mayor vetoed one and his veto was upheld. So only the 11 went to the people first that is.

Q. But it was the desire of the City Council after their passage that they both go to the people at the same time. Is that correct? A. To provide a majority, yes.

Q. Was there words of expression at that time [50] as

to what the impact would be if both secured the approval of the people at the same time? A. Yes, there was.

Q. What was the discussion? What was the expression? A. Well as to how it would be done or what would happen?

Q. Right. A. That's all, just along those lines, but, as I said, it was all moot because the Mayor vetoed the 9, first let the 11 go to the people singly and by itself, and it did see, and a majority of the Council voted for it.

Q. Voted for what, Sir? A. To allow 11-man Council to go to the people by itself.

Q. How did the Council vote for that, by failing to override the Mayor's veto? A. That's right.

Mr. Shurtliff: I have no further questions.

[51] By Mr. Halpin:

Q. Mr. Di Rosa, you mentioned that you were elected to City Council the first time and at-large in 1962. Did you hold any elective office before that date? A. No.

Q. Have you lived all of your life in New Orleans? A. Yes. I was born here, lived here all my life and hope to live the rest of it here.

Q. During your term from 1962 to '64— A. '66.

Q. —to '66— A. Four-year term.

Q. —were you aware during that time of many demonstrations, particularly sit-in demonstrations, by black people in the City of New Orleans, to secure service at public lunch counters? A. Yes. I think that was all over the country, much more violent in other sections than here though.

Q. Do you know (interrupted by witness). [52] A. If I might elaborate.

Q. Go ahead, excuse me.

Mr. Stoner: Go ahead.

The Witness: I'd rather not.

By Mr. Halpin:

Q. Do you recall the specific measures that the City Council took during those four years relative to those lunch

counter demonstrations? A. No. They were violation of the law, and they just enforced the law. We didn't take any specific action other than to have the law enforced, that's all.

Q. When you said they were violations of the law, what do you mean? A. Sit-in demonstrations and any interference of the rights of others is a violation of the law in my opinion, and I think that's the law.

Q. Do you recall when Reverend Alexander, local black leader, was dragged out of the City Hall cafeteria, was [53] dragged out by his heels when he tried to demonstrate and sit in the cafeteria? A. I was not here at that time. I was out of town at the time. I have heard of the incident, but I don't know if it was by his heels as you described it.

Q. But you were aware during that time the City Hall cafeteria refused to serve black people? A. Positively.

Q. And did the City Council take any action or resolution in regards to that situation during that 4-year period from '62 to '66? A. Not that I know of.

Q. That was again a violation of the law? A. What?

Q. For the people that were trying to be served in the City Hall cafeteria they were violating the law? A. If they violated what was considered the peace of the community at that time they were, yes.

Q. Did you support those endeavors? [54] A. Support them in what way?

Q. Did you support them in any way? A. I didn't support them nor was I against them.

Q. But you believe that they were violations of the law? You believed that the conduct was illegal activity? A. The conduct itself?

Q. Yes. A. Yes. If it interferes with the rights of others I think it is.

Q. Are you aware that since that time Federal Civil Rights legislation has been passed which allows for non-discrimination in such public accommodations? A. And that's the law now, and we, of course, abide by that.

Q. Were you ever a member of an organization called Save Our Schools? A. No, sure wasn't.

Q. Are you familiar with what that oraganization was? A. I don't remember it as such to be frank with you. I had nothing to do with [55] it nor was I in any part of it.

Q. Do you recall in 1959 and in 1960 and in the years immediately thereafter, when the New Orleans Public Schools were being desegregated for the first time? A. I don't believe I was on the Council at that time.

Q. Do you remember at that time though? A. I remember they had some turmoil about that, yes.

Q. Were you a member of any organization either in support or against any of that activity relative to the desegregation of schools? A. I was not.

Q. Have you ever in those years between 1962 and 1966 did you ever take a position supporting the Civil Rights of black people in Louisiana? A. Yes. I think we all did on the Council.

Q. Did you take a position supporting that blacks should be served at places of public accommodation prior to the Civil Rights law? [56] A. It didn't come up in our administration, and it was never presented and was never taken up that I can recall.

Q. Now you mentioned that in devising the Moreau plan, that is the second plan, that you knew that the Supreme Court had allowed a 16 percent deviation. Was that your testimony? A. Right.

Q. Isn't it true that the decision which you referred to, Mayhem versus Howell was actually decided after the Commission Council had adopted the resolution? A. I don't remember exactly whether it was after or not. But I do recall that others had allowed other variations before that time. I think it was 6, 8 and 10, and then last one was the 16.

Q. You mentioned that in New Orleans assessors— A. Excuse me.

Q. That's all right. A. I also said at that time we kept it as close to 119,000 as we could.

[57] Q. You mentioned that New Orleans assessors are elected from combinations of wards. Is it not the primary duty of assessors to assess real property and keep records and so forth relative to real property in the City of New Orleans? A. Yes, and personal property also.

Q. Now is it not true that the property in the City of New Orleans is organized by wards? A. No, it's not true, it's not organized.

Q. In what way is it organized? In other words, if you would file a legal description of property, legal property, would not you described it as being in the ward such and such, section such and such? A. No. I think our description is more on the basis of assessors' districts in district so and so and follows those descriptions.

Q. In districts. It doesn't go into wards and/or precincts? A. No. It gives a description and it gives [58] section, like the Fifth Municipal District for example or something of that nature.

Q. Now you mentioned that in determining to use a river-to-lake configuration of the districts that you were influenced by the decision of the Fifth Circuit in regards to the Senatorial seats in the City of New Orleans. Is that correct? A. Well influenced only to the extent that it followed historic boundaries.

Q. Were you aware that that same Fifth Circuit decision in fact also affirmed the legislative districts? A. No.

Q. Were you aware that the United States Supreme Court in a case called Taylor versus McKeithen, in a per curiam opinion, granted certiorari to review the Fifth Circuit's opinion relative to the four Senatorial districts? A. I understand that's the case, but I understand it hasn't been done yet.

[59] Q. Did you examine that per curiam opinion issued by the Supreme Court in Taylor versus McKeithen— A. No.

Q. —for guidance relative to drawing the districts? A. No.

Q. Have you ever run for any other political offices besides councilman? A. No, none at all.

Q. In campaigning for the at-large seat have you had occasion to form political alliance with other candidates who were running for district seats on the City Council? A. No. As I tell you, it's sort of an individual proposition. Everybody runs for themselves you know.

Q. Is it different running at large than it is running from a particular district? A. Certainly it is. You run city-wide. It's much more burdensome than running in the districts.

Q. How is it more burdensome? A. Well in the sense you got more to cover. [60] You got meetings, for example, in one section of the City. Next time it might be in other end of the City In districts you limit yourself to just that area.

Q. How else is it more burdensome to run at large? A. Well in a sense more votes, more people, more organizations, more everything.

Q. When you say more organizations? A. It's practically the same as running for Mayor. In fact there isn't too much difference other than one is the head and the other isn't.

Q. Well you say it's more, there are more organizations and it's more burdensome. Could you testify what you mean by that? What do you have to do? A. Well drive to the political organizations because you have to coordinate them, that is, if you have several organizations that's backing you, and that's usually the case. Then you try to make all their meetings, and usually they set them up at 8 o'clock, [61] and it becomes almost an impossible task to go to all the meetings at 8 o'clock. So you wind up explaining to them, those you missed, you try to go back and rectify it with the people because you didn't show up to theirs and you went to the other ones, and I think that becomes a little burdensome.

Q. So it's more expensive to run at large than it is in a district? A. Oh yes, much.

Q. About how much would you estimate that you spent in each of your campaigns starting in 1962? A. Gee, I really don't know.

Q. Could you give me a rough estimate? A. I would have to be too rough. I really couldn't tell you a thing, anything about that. I would say maybe 30,000, something like that I would guess.

Q. How does one go about raising campaign money for at-large elections? A. Well for one, as I told you several weeks [62] ago, Pete Fontain in town gave a concert for me, and we charged $25.00 a person to come to the concert, made some money from that.

Q. How many people did you have in attendance there? A. I guess about 400 I would imagine, something like that. I wish they would have had 10,000.

Q. About how many of those concerts and testimonial dinners would you have to raise money?

MR. STONNER: I object to the question, I don't believe there's any evidence that there was testimonial dinners.

BY MR. HALPIN:

Q. OK. How many of similar sorts of occasions for raising campaign money would ordinarily take place in a given campaign? A. You do as many as you can without trying to make it too burdensome. You see that becomes really question of how many people will try to do it for you, [63] and then you got to be careful that you don't antagonize more voters and then you try to get funds from, and in that instance you might wind up having a negative factor instead of a positive factor.

Q. In the three times you know that you've run for Councilman-at-large approximately how many similar fund-raising functions would you have in each campaign? A. I guess three or four. That's just a rough guess.

Q. What other sources of campaign funds would you have? A. Friends contribute, borrow money yourself or try to get it somewhere.

Q. What would you say was your single largest contribution from an individual or a group in say your last campaign? A. Oh I guess about 2,000, something like that.

Q. And about how many $2,000 contributions would you ordinarily receive? A. Well if you got three or four you'd be [64] doing pretty good.

Q. Do you usually get three or four? A. Sometimes you get three or so.

Q. How does one gain the endorsement of particular political organizations and groups in the City of New Orleans? A. You appear before the groups. Usually they call you in before the group to appear before them, and then you make a statement to them. All the candidates do make a statement, and then they ask questions on the statements that you make and then they retire and evidently cast a vote between them, and from that way you get the endorsement.

Q. Then what do they do for you as a candidate? A. Try to contact people. It's a question of trying to contact as many people as you can during the campaign and try to espouse your cause.

Q. Do they put any money into your campaign? A. No, very seldom. I don't know of any of them that does that.

Q. In fact isn't the practice usually the [65] reverse? The candidates will give a certain amount of money to the political organization to assure that they'll have the money to campaign for him? A. Print ballots, mail-outs of people, canvas the neighborhood for you, get your literature out, yes.

Q. About how much does a candidate usually have to contribute to a political organization by way of their expenses and so on for their endorsement? A. It depends on the size, whether they're city-wide, whether it's pre-

cinct or ward setup, and usually on that basis might run from $100 to maybe $1,000.

Q. For instance, what political group was your largest supporter, biggest supporter in the last councilmanic election? A. I was hoping they all were. I couldn't name you any one group. I wasn't going to take a chance on saying, no chance. You mean some of groups you mean? [66] Q. Some of the groups that were for you. I just wanted you to give a group. A. No groups were more important than others. When you're running they're all important.

Q. I understand. Just name of the ones that did support you. A. OPPVL. That was Reverend Davis; CCVL, that's Chink Henry. I think he represented me; the RDO; CCDA.

Q. Are any of these political groups traditional political enemies? A. I guess they all are to some extent.

Q. About how much did you have to contribute to the OPPVL? A. Nothing.

Q. When you obtained the endorsement? A. Nothing. I don't believe Reverend Davis charged anything.

Q. How about the CCVL? A. I don't think he charged anything either.

Q. How about the RDO? A. RDO, I think that was $1,000 I believe.

Q. How about the CCDA? A. I think that was about the same. Those are [67] from memory. That's for mail-outs, as I tell you, and ballots and things of that sort.

Q. When you're running at large do you tend to spend more of your campaign money on for instance television and citywide media than you would if you're running from districts? A. Yes.

Q. Is that type of political advertisement generally more expensive by its nature than other types? A. Yes, it is.

Q. Do you recall about how much you spent for media advertising in your last campaign for City Councilman? A. No. I really don't. We had an agency handling some

of it. Of course, they operate, they get 15 percent of whatever you place, and they don't charge you anything.

Q. Is there any way that you could check it? Is there any way that you could determine from the agency that handled your advertising the amount of money [68] that was spent on media advertising and have that available when you're in Washington on the 17th? A. I don't know. They're not in business anymore. In fact they're in a different type of business now, production. I don't know if they still maintain that kind of records.

Q. What is the name of the agency that handled you in the last election? A. Barra Bircher.

Q. Could you spell it? A. B-a-r-r-a I think is his first name and B-i-r-c-h-e-r.

Q. And you said that's no longer in existence as advertising agency? A. Right. He's been in about four agencies since that time I believe.

Q. Did the same outfit also handle your advertising in '62 and '66 campaigns? A. No. They didn't handle it then.

Q. Do you recall who handled it in 1966? A. No. In '62 we ran as a ticket, that is on the Mayor's ticket. I ran with Schiro, as I recall, and I don't think [69] we had an agency as such; placed it more through some friends in the media without any advertising agency as such.

Q. It wasn't the same type of campaign. In that instance you pooled the money with the ticket? A. Right.

Q. And they spent it? A. Right.

Q. And that was the easier way, particularly when you were running at large, because you'd get more value for your dollar? A. That's correct.

Q. So it's an advantage in an at-large seat to run on a ticket? A. Well it could be a disadvantage. It all depends on what you're saddled with. You see it all depends on all the other members of your ticket over which you have no control.

Q. Let me correct it. It's a financial advantage to some extent? A. It's a financial advantage when you're running city-wide to join together with as many tickets as you can when [70] they have a city-wide election when you're running by yourself. That is two at-large districts, and one at-large councilman looks to get on as many tickets as he can with as many people as he can to try to get as much exposure as he can. It's a question of exposure.

Q. How about 1966? You recall what advertising agency handled your campaign advertisement? A. I don't believe I had any then either.

Q. Did you run on a ticket then as well? A. Yes. I ran with Schiro again when we ran back for re-election. He was sick and he ran his campaign, and I wound up losing by about 257 votes out of 140,000.

Q. Would you be willing to contact your advertising people to see if they have those records available and bring them with you to Washington on the 17th? A. I have no objection to it. I don't see what purpose it serves. I really [71] don't know what that has to do with redistricting.

Q. Maybe I'll speak with your attorney after the deposition in regards to that. A. Yes.

Q. Where is Mr. Barra, his first name is Barra? A. Barra Bircher, right.

Q. Where is Mr. Barra Bircher employed, do you know? A. I really don't. He was working at the race track you know as a promotional man there, and then he went with about three agencies since that time. I don't know where he is now.

Q. You mentioned that in developing the Moreau plan you gave serious consideration to natural boundaries and roadways and so forth. Is that correct? A. Wards I said, yes, historic boundaries.

Q. Referring now to the first plan that was adopted, was that a serious effort to create a fair redistricting plan? A. In my opinion it was certainly.

[72] Q. Did you also consider the Supreme Court's decision and other decision that you mentioned in developing that plan? A. Positively.

Q. And in your opinion that plan also followed natural boundaries and historic boundaries and ward boundaries? A. With the exception that the wards had to be broken up, yes. See, this is first time, as I said before, that the ward boundaries cannot in themselves form a district.

Q. In your opinion was the first plan as fair a redistricting plan as the second one?

Mr. Stoner: I object to that. The first plan was adopted by the Council. It was objected to by the Department of Justice. The second plan has been adopted. I don't think it's proper to ask the witness to evaluate on the question of quote "fairness" end quotes between the two plans. I instruct the witness not to answer the question because I think it's [73] speculative. I don't think it has any probative value.

Mr. Halpin: We will raise that again. Note that I do think it's relevant.

By Mr. Halpin:

Q. Did you consider, for instance, the splitting up of Algiers into three portions in the first plan as conforming with the criteria of the natural boundaries? A. Yes, Sir, I do. As I told you, the reason for it was that three members would then be responsible for that area and they would have three votes to look for because in any election that's anywhere close every precinct even means a lot to an elected official. We look at it on the number of votes you have and you wouldn't think of alienating that many people in your district.

Q. Did the first plan tend to dilute the votes of blacks in the City of New Orleans? [74] A. I don't think any of them did, any of them that we proposed.

Q. How is the Council President chosen? A. It's by custom. We used to rotate it every six months between us.

We now rotate it every four months, and so do we rotate the Vice President, which is one of the district councilmen. That, too, is set forth in the charter, not the rotation now, just the fact that the Council President shall be one of the two councilmen-at-large and Vice President shall be one of the five district councilmen.

Q. Is part of the philosophy of having at-large members of the Council that these members will respond to a different constituency, that is a city-wide constituency and the district members respond to district constituencies? A. I would think that's part of the theory it would be sort of a balancing force between districts.

Q. And sometimes the majority say in a district is not the same as a majority in the [75] City in terms of an issue? A. That's very possible.

Q. And generally as a councilman you would then, as an at-large councilman, you would be generally responding to a majority of the people in the City as a whole? A. That's right.

Q. And that majority is white? A. No, I don't know if it is. I think the contention has been made by you that it's 50 percent. Certainly it's been the contention that we've been hearing.

Mr. Halpin: I have no other questions.

Mr. Stoner: I have no questions.

Deposition of Mr. Clarence O. Dupuy
October 5, 1973

Deposition of MR. CLARENCE O. DUPUY, taken in the above entitled cause, before Howard E. Stumpf, an Official Court Reporter, authorized to administer oaths of witnesses pursuant to Section 961.1 of Title 13 of the Louisiana Revised Statutes of 1950, as amended, pursuant to the following stipulation, given in Suite 2 W 23, City Attorney's Office, City Hall, 1300 Perdido Street, New Orleans, Louisiana 70112, on the 5th [2] day of October, 1973.

APPEARANCES:

STONER, TREESE & RUFFNER
(By: JAMES R. STONER, ESQ.)
For the Plaintiffs (New Orleans City Council)

NATHANIEL FRIENDS, ESQ.
and
M. KARL SHURTLIFF, ESQ.
For the Department of Justice
United States of America

KIDD, KATZ & HALPIN
(By: STANLEY A. HALPIN, JR., ESQ.)
For defendant intervenors,
Johnny Jackson, et al

REPORTED BY: Howard E. Stumpf,
Official Court Reporter

[3] STIPULATION

It is stipulated and agreed that the testimony of MR. CLARENCE O. DUPUY is hereby being taken pursuant to the Federal Rules of Civil Procedure for purposes of discovery. The formalities of signing, sealing and certification are waived. All objections, except those as to the form of the question, are reserved until the time of the trial of the cause.

Q. Did you participate in the deliberations considering that plan prior to its being drafted? [8]A. Before the Commission Council?

Q. Yes. A. When the plan was presented to the City Council I did participate in the deliberations.

Q. What were the guidelines in drawing up the districts? A. Well to try to equalize the population as between the five districts, to try to come up with a plan that we could approve that would use natural boundaries as much as possible to those districts.

Q. What natural boundaries are you referring to? A. Well I'm talking about the ward boundaries. Well the natural boundaries would be the canal running between the lake and the river. They run north-south. We also tried to stick to traditional boundaries as much as possible. I mean the ward boundaries.

Q. What is your understanding as to the function of the wards? A. Function of wards as I understand it was to [9] divide the City into wards which will be used in districting the State legislature, City Council, and in particular with regard to the legislature to provide as much representation of the people in each ward in the legislature as possible, and to get as much representation in the State legislature from the City of New Orleans as we possibly can get.

Q. Is it your understanding that any redistricting should follow ward lines? A. No. I don't think that redistricting of the City Council should necessarily follow ward lines, and I don't see that it's possible to redistrict the City Council sticking strictly to ward lines, and the plan that we approved did not stick strictly to ward lines. We traversed ward lines. The redistricting plan that we approved that I voted for includes some precincts in Ward 7.

Q. But you indicated that was one of your guidelines? [10] A. That was one of the guidelines, yes.

By Mr. Stoner:

Q. Are you familiar with the ordinances increasing the size of the City Council? A. Uh, huh.

Q. What were those ordinances? A. I think we had one ordinance that was approved to increase the total membership of the Council to 9 and I think the other one was 11.

By Mr. Friends:

Q. Did you speak in favor of either one of those ordinances? A. Well I spoke in favor, no, I don't recall whether I spoke in favor of them. I know I had serious reservations about increasing the size of the Council, although I remember I believe, if I remember correctly, that I voted in favor of submitting to the people the 9-member plan, and I think I voted, if I remember correctly, and this is strictly from memory, I think I voted against the 11 plan.

[11] Q. What were your reservations based on? A. I don't think it's necessary to increase the City Council to give every citizen in the City of New Orleans proper representation. I don't think it's needed, and I think it's going to be very costly by adding additional members of the Council to provide office space to them, salaries, increased staff, and in a City this size I didn't think it needs to have a City Council in excess of 7 members.

Q. Were public hearings held on the first redistricting plan? A. Yes.

Q. Do you recall what persons attended those hearings? A. On the first redistricting plan?

Q. Yes, either persons or the groups. A. I can remember some of them, yes.

Q. Were there any black groups? A. Yes, there were some black groups in attendance.

Q. Did they favor the redistricting plan? A. I think so. You mean the 9 and 11 or are [12] you talking about the first redistricting plan?

Q. The first redistricting plan? A. If I remember correctly I'd say the majority my impression was I think. You're talking about black people now?

Q. Yes. A. The majority of the black people at that time were not in favor of the redistricting plan. The majority as I understand at that time was in favor of enlarging the City Council, the membership of the City Council, when that first plan was before the Council. That's the impression that I got.

Q. When this ordinance was put before the people? A. What ordinance?

Q. The ordinance of 11-man Council. A. Oh 11-man Council?

Q. Yes. At the time of the referendum do you recall the election results? A. The precise election results, no, I don't.

It was defeated by the people. I [13] don't recall the precise election results.

Q. Do you think that most of the black persons voted for that? A. I would have no way of knowing that and didn't even inquire about it.

Q. During the three times that you run for office have you ever had a black opponent? A. I've never had any person who asserted publicly that he was a black person to run against me. But whether any of them were in fact black people or not, it would be very difficult for me to say.

Q. You don't know the race of the candidates who ran against you? A. No, I don't. If you asked me if they're Italian, French, German, Negro or whatever their race, no, I didn't. I never did inquire about that.

Q. You can't recognize a black man from a white man? A. Well sometimes it's obvious and sometimes it isn't. It's usually not in my [14] mind when I look at someone as to whether he's black or white.

Q. Did you ever run on a ticket either time you ran for office? A. Yes, I have.

Q. In the first election, being '62, what ticket did you run on? A. The ticket was headed by James Comiskey.

Q. And what office was he running for? A. Mayor.

Q. Were you on any other tickets? A. What's that?

Q. Were you on any other tickets? A. Not that I remember.

Q. What about the election of '66? A. Let's see, the next election, I'm trying to think who was running for mayor in that election. I believe in that election that Fitzmorris was a candidate, and I believe that I was on his ticket.

Q. Were you on any other tickets? A. But I'm not completely certain of that.

Q. Was that the only ticket you were on? A. I believe so. I don't remember precisely [15] whether I was any other tickets, but I don't believe I was.

Q. What about the last election? A. The last election I was on Fitzmorris's ticket. I think he was a candidate for Mayor, and I was on no other tickets but his ticket.

Q. How do you go about getting on the ticket of the candidate? How do you go about getting on the ticket in running for office in New Orleans? A. Well you try to get on as many tickets as you possibly can get on.

Q. How do you go about doing that? A. Well you ask to get on it. You ask the candidate. You discuss it with him.

Q. Do you know what factors are considered? A. By whom?

Q. By the person who is accepting you on his ticket or considering you for his ticket? A. Well in the questions that some of them have asked me when I have discussed it with them they're interested in knowing whether I would be an appealing [16] candidate to the people, that I have the background. I think they probably look at if I've been in previous elections, probably look at how bad or how well I've done in previous elections. I think those are the things that they consider. I can't say everything that they consider because I've never had one to tell me and I've never asked him.

Q. Have you ever been on a ticket with a black candidate? A. I don't remember whether Fitzmorris had any black candidates on his ticket or not last time.

Q. Were you supported by any black organizations? A. Yes, I was.

Q. What organizations were they? A. I have previously been supported by Reverend Davis's organization, and I don't remember the full name of it, who is a black clergyman and who headed that organization, and I'm trying to think of the names of them now. I can't remember the names of them, but I would say I've been supported by a substantial number of black organizations.

Q. Are those organizations in your district? A. Yes. They had representation in my district. Some of them were citywide organizations.

Q. What are the black organizations in your district? A. The black organizations that's just in my district solely?

Q. Yes. A. I don't know whether the Treme Improvement Association is a political organization or not, but I would think if they are political organization they are solely in my district, and I've had black individuals to support me very strongly.

Q. Do you know where the headquarters of the Treme organization is? A. Yes. It's right off of Orleans.

Q. Is that a black neighborhood? A. Yes, predominantly black neighborhood. [18] As a matter of fact it's a pretty fine progressive organization at times, and just yesterday I authored an ordinance that approved a recreation center for that area, a very substantial recreation center to be located in that area which I've been working on for a number of years.

Q. Is that in the City budget? A. Yes.

Q. Is that the only black neighborhood in your district? A. No. You're talking about the district as it's composed now or under the second redistricting plan? You're talking about the plan that is before the courts now?

Q. Yes. A. No. We have a predominantly black area around the Fisher Project in Algiers and certain precincts of the Fourth Ward are predominantly black, I'd say in the downtown section of the Fourth Ward. Again in certain parts of the French Quarter, which is in my [19] district, they have solid black areas or predominantly black areas. There's a number of black areas in my district.

Q. What is your estimate as to the number of blacks in your district percentagewise? A. I don't know. I wouldn't hazard a guess as to what the percentage is. I have looked at those figures in the past, but I don't remember what they were; didn't try to remember them.

Q. Did you consider those figures in the deliberations considering the first redistricting plan? A. No, only in the sense that we wanted to make sure that we were not diluting black voting strength, only in regards to that.

Q. What do you mean by diluting? A. Well shifting around any mass areas where they were predominantly black people located to areas where we would have a predominantly white majority and thereby diluting the voting strength [20] of the black minority.

Q. Did you use the previous district as a standard? A. What previous?

Q. Prior to the redistricting. Did you try not to make blacks any worse off than they were before? A. I tried not to dilute black voting strength. I don't know what you mean by making sure they were any worse off than they were before.

Q. Well district had say 50 percent black, would you try to make sure that they maintained that percentage? A. No. We had to follow other guidelines of making sure that the population was as equal as possible.

Q. What did you follow for the second redistricting plan? A. The same; tried to follow the natural boundaries as much as possible, equalize the population of each district.

Q. Did you consider any plans that called for joining guidelines in an east- [21] west fashion. A. I don't believe

there were any plans on the east-west, but I'm not completely sure of that because there were so many plans that were discussed and so many plans that were prepared by the staff it would be very difficult to say if any of them included east-west. They may have and they may not have.

Q. Mr. Dupuy, this City have a methadone clinic? A. Yes.

Q. Where is that located? A. There are several of them. I don't know the exact addresses of any of them. The one that's in my district that I remember quite well. I think it's on Tulane Avenue.

Q. Is that a black neighborhood? A. I really don't know if you mean by black neighborhood you mean predominantly black, I don't know whether you could say it's predominantly black. There's a lot of businesses in that area. I [22] don't believe it's predominantly black.

Q. Do you think it's a proper location? A. Well I wouldn't have any way of knowing whether it's in the proper location. From what point of view?

Q. From your point of view.

Mr. Stoner: I'm going to object to this line of questions. I don't think it's relevant at all in the issues in the case. I don't know what it has to do with the matter that is before the court and in the case in which Mr. Dupuy is being deposed. My opinion it's completely irrelevant, and I'm going to object to the question.

Mr. Friends: Objection is noted.

By Mr. Friends:

Q. Do you think it's in a proper location? A. You want me to answer that?

Mr. Stoner: If you can, go ahead and answer it, [23] Mr. Dupuy.

The Witness: I don't know whether it's in a proper location or not.

By Mr. Friends:

Q. Have you taken steps to have it moved? A. No. I not yet taken steps to have it moved. But if you're referring to, and I take it you are referring to the motion adopted by the City Council which was submitted to the Planning Commission to determine whether the zoning laws of the City are to be amended to provide certain zoning areas in which methadone clinics should be located. Is that what's on your mind? Is that what is prompting you asking me?

Q. Just answer the question, please? A. Will you repeat the question?

Q. I asked you have you taken steps to have it moved? A. I've taken steps to review the location of all methadone clinics in the City of New Orleans, and that matter is [24] presently pending before the Planning Commission, which is the City's experts on zoning to determine whether methadone clinics should be located just in areas of the hospitals, where the hospitals are located and whether the zoning law of the City of New Orleans should be amended to be provide that or not. I have not made up my mind whether I would support any changes to it or whether I'd agree to let the zoning law stay as it stands.

Q. So I take it you have not suggested an alternative location for the one in your district? A. I have not suggested an alternative location for the one in my district.

Q. During your tenure on the City Council have you had occasion for black groups to present certain issues to you that were of particular interest to them? A. Yes.

Q. Would you explain some of those issues? [25] A. Just the most recent one is a group of black businessmen complained to me of lack of police protection in the area where they have their businesses which is predominantly black. They complained to me to assist them with the Police Department to increase the police protection in that area because of the large incidents of crime, which I did, and the police patrols in that area were increased.

I've had similar requests from a group of black ladies that came in to see me about increasing the police protection in the Calliope Project, which is Federal housing project, located in my district where there's been a large incident of crime. I had a black group to request my assistance in getting through the project, which I was successful in obtaining yesterday, recreation area in the Treme area. I've had black groups to obtain my assistance in obtaining employment. I've had all [26] kinds of requests from black groups.

Q. You're talking about requests that you personally handled? A. Requested me personally.

Q. OK. Have you had groups to come before you sitting with the Council? A. Sure.

Q. Certain problems? A. Yes.

Q. Would you explain some of those? A. Well I can remember an outstanding example of the black groups appearing before the City Council was when we had the public accommodations ordinance before the City Council.

Q. When was that? A. This was several years ago. If I remember correctly, it was approximately four years ago. Matter of fact I think it was right after the last election, after I was re-elected the last time, that this ordinance came before the City Council. I voted for it and it was approved, public accommodations law which requires that all public [27] places such as restaurants and bars and everything be opened to all people of all races; had one of the largest groups of black people that appeared before the City Council supporting that public accommodations ordinance, which I was pleased to vote for.

We've had black people appear before the City Council on zoning matters, sometimes in favor of zoning changes, sometimes opposing it; similar things that we had many black groups appear before City Council.

Q. Are you familiar with the Federal Model City Program? A. To a degree.

Q. Do you know where the target areas are? A. Target

areas, Desire Project around the Ninth Ward area and also in parts of my area that I presently represent which composes a part of the Second Ward and a part of the First Ward.

Q. In your district part of the Model City target area what is the racial makeup [28] of that area? A. It's predominantly black.

Q. Would you say it's 80-90 percent? A. It's hard for me to give you percentages. I'll say that it's overwhelming predominantly black.

Q. Have you supported any candidates running at large? A. For Councilman-at-large?

Q. Councilman-at-large. A. Usually when Councilmen-at-large are running I'm running myself, so I'm supporting myself, and we all run at the same time, and it's very difficult for me to endorse. Of course, if he's on the ticket with me then we're all in effect running together. But just to pick somebody out and endorse him publicly I can't remember ever doing it.

Q. Have you ever supported a black candidate? A. Yes, uh, huh.

Q. What candidate was that? A. Dutch (D-u-t-c-h) Morial.

Q. What office was he seeking? [29] A. I think Dutch at that time was running for the legislature I believe, State legislature. I'm not sure. It was either that or Juvenile Court Judge.

Q. Did you review the election results? A. Did I review them?

Q. Yes. A. I probably read them in the paper after the election.

Q. Was he successful? A. Yes.

Q. Did you notice any block voting by race? A. I've never had any interest in block voting and I've always tried to discourage it.

Q. Do you know if it exists? A. Yes, it does exist. I think it exists on the part of black people and also on the

MR. CLARENCE O. DUPUTY, City Councilman, City Hall 1300 Perdido Street, New Orleans, Louisiana 70112, a witness named in the above stipulation, being first duly sworn in the cause, testified on his oath as follows:

By Mr. Friends:

Q. State your name, please. A. Clarence O. Dupuy.

Q. And your address, Sir? A. My home address?

Q. Here is sufficient. [4] A. My address is City Hall.

Q. What is your occupation? A. I'm a member of the City Council and by profession I'm an attorney.

Q. What was your previous occupation? A. Previous to what?

Q. To City Council. A. I was an attorney.

Q. How long have you been on the City Council? A. I think I'm in my twelfth year now.

Q. You were elected three times. Is that correct? A. Yes.

Q. When did you first run for City Council? A. Let's see. It would be 1961 or '62. I think it was '62.

Q. Was that your first time running for public office? A. Yes.

Q. Approximately how much time do you spend in Council business? A. Whatever is needed. It varies depending upon what the issue and what business is before the City Council.

Q. On the average what would you say that would [5] be? A. It would be very difficult to average it out because sometimes it takes a lot of time and then other times business gets very slow. For instance around Budget hearings we're here everyday, and we work from morning until late in the evening. And if we have something particular before the Council that's going on we take a lot more time to prepare. You may be here everyday. You may be able to skip a few days at the end of it. It would be very difficult to average it out because it varies, fluctuates so much.

Q. And were you always a District Councilman? A. Yes.

Q. In what district is that? A. District C.

Q. Do you know the population of District C? A. Well the population before the redistricting was about 100,000 votes, people, 100,000 people. I had to pick up in the redistricting about 17 or 18,000 [6] more.

Q. Do you know the racial makeup of the district? A. No, I don't.

Q. Do you have an estimate? A. No. I don't even have an estimate.

Q. Do you know the number of registered voters in your district? A. No. I don't know the latest number. I can't remember.

Q. Do you know the number of registered voters before the redistricting? A. Well I was familiar with the amount of registered voters at the time we discussed redistricting, and when it was pending before the City Council.

Q. Do you recall what the figures were? A. No, I don't. Q. Do you have any idea what percentage of the registered voters are black? A. No, I don't.

Q. Calling your attention to the first redistricting plan, and referring to the plan that was adopted by the Council submitted to the Justice [7] Department I believe in '71, I don't recall the exact date, but there was one that was previously adopted. Do you recall what was your understanding as to the problem with that plan? A. Well I don't think my understanding was that first of all the districts were not really contiguous, and I think that was the biggest problem that stands out in my mind, the most serious problem.

Q. What was your understanding as to why the Justice Department objected to the plan? A. Well I haven't read the Justice Department's letter lately, but I read it originally, and I don't recall the contents of the letter, but I did familiarize myself with it when we received the letter, but I haven't read it in such a long time that I couldn't repeat to you what's in it.

to the voters at the same time? A. I think it would have caused mass confusion.

Q. In voting for to override the Mayor's veto isn't that what was contemplated? A. No, because if I remember correctly these plans went to the public separately on two different occasions. I think first the 11-man went to the voters and then the 9-member, if I remember correctly. No. I think maybe only the 11-man went to the voters. I tell you really I can't remember, but I think the 11-man plan went to the voters separately.

Q. You indicated that you had discussions with other councilmen concerning the second redistricting plan? A. Uh, huh.

Q. Did you also have discussions with the [35] Council's research staff? A. Yes.

Q. What were those discussions? A. It was about, generally about redistricting, what constitutes the guidelines and what's the best way to comply with them; just a general discussion about redistricting and what was the job that had to be done, many conversations, had many conversations together, many discussions.

Q. Were statistics available by race then? A. Yes, they were.

Q. Were registered voters by race also? A. Registered voters and also population.

Q. You stated that in your view block voting does exist in New Orleans? Is that correct? A. Yes. I think in the past it has existed in some elections.

Q. Do you know of any examples?

Mr. Stoner: When?

The Witness: When you say?

[36] By Mr. Friends:

Q. Within the past ten years. A. I can't remember any particular example of it, no.

Q. Has it occurred on any referendum elections at all during that period? A. I have no independent recollection of any referendum election where it occurred. It may have occurred in the first, when the first plan 11-man plan was submitted, but I don't have any independent recollection of it having occurred in that particular referendum or any other particular referendum. I remember that it has occurred at the time.

Q. In your view would it most likely occur when there's a black and white candidate? A. In my view, in my opinion that's probably the most likely time for it to occur.

Mr. Friends: I have no further questions.

By Mr. Halpin:

Q. Mr. Dupuy, is it correct that you never ran for any political office prior to [37] 1962, in 1962 elections for City Council? A. Right.

Q. How expensive is it to conduct a campaign for City Council from a district in New Orleans? A. That depends upon your opposition, how many opponents you have, how much activities your opponent is engaging in.

Q. Did you have a stiff opposition in 1962? A. Yes. In every election I've run in I've had what I consider to be stiff opposition.

Q. And in giving that stiff opposition about how much money do you have to spend? A. I can't remember precisely what I spent.

Q. Can you remember approximately? A. I'd have to take a guess. In the last election I was in it was approximately four years or more ago, and it would be difficult. It would be such a guess that I just wouldn't want to guess what I spent.

Q. Would you say it would be around 30,000? [38] A. I didn't spend $30,000 in my last election, no. I knew it wasn't that much.

Q. Did you run on a ticket in 1970? A. Yes. I ran on Fitzmorris's ticket in 1970.

part of white people, and I do not approve it. I think a man ought to be voted for based on his qualification for the office not his race.

Q. What is the purpose of tickets? A. I guess the biggest purpose of tickets, of [30] course, is to share the expenses of the election, which each candidate puts up a certain sum of money. They pool it to have as much public relations they possibly can. Another purpose of the ticket from our point of view is that I can be acceptable to a candidate for Mayor or some major office who I think is going to be successful and who stands for the same things that I stand for. I'd like to be on his ticket.

Q. To come back to the second redistricting plan now, would it be fair to say that you are mostly concerned with your district in terms of getting the plan drafted, how it belongs in your district? A. Well in this particular instance I had to look at it as a whole for the City. Whatever we had I look at it first how it affects my district and then also how it affects the entire City. But in approaching this redistricting plan we had to look at it not just [31] from the point of view of our individual districts but also from the entire City because the only way you can have a plan that divides the population equally is to look at it from the City as whole, and the only way that you can determine or make a decision as to the areas being contiguous.

Q. So from the point of view of the entire City rather than just your own district in this matter? A. In this matter which is presently pending before the courts it was not completely acceptable to me from a political point of view because the plan took away from me an area which I had previously run very, very strong politically, the Third Ward. Each of the cases that I've run for public office I have carried the Third Ward overwhemingly. I voted for a plan that took the Third Ward out of my district completely. So I didn't look at it just from my district itself. [32] I had to look at it as a whole to do the best thing for the people of New Orleans.

Q. Was making sure that councilmen in the remaining districts didn't consider running in the same district? A. I have never instructed the staff or anyone else to do that.

Q. Do you know if anyone on the staff did? A. I don't know of anyone that ever instructed the staff to do that.

Q. Did they review any plans councilmen may become councilmen in the same district? A. I think there were some informal plans that councilmen had pitted against each other in their districts, but it just so happens this plan which was submitted to me, the plan that was approved, the second redistricting plan, there was no necessity in putting councilmen in the same district with each other. It wasn't necessary to achieve a redistricting plan that in my opinion fully complies with the guidelines of the law.

[33] Q. Those guidelines don't follow natural boundaries one man one vote mandate? A. Yes. They follow one man one vote rule. It does in my opinion. I'm not, as I told you, completely happy about the plan from a political point of view having taken away from me strongest area that I had, the Third Ward. But I believe it's an equitable plan. I think it fully complies with the guidelines, and that's why I supported it even though it was not politically beneficial for me to do so.

Q. Would you discuss the location of the boundary line between District E and B, well Councilman Lambert? A. Councilman Lambert is in District B.

Q. Did you discuss the boundary lines between those two districts? A. Did I discuss it?

Q. Where the line would be drawn? A. I discussed it with everybody, not only with Mr. Lambert. I discussed it with all the members of the City Council .

[34] Q. Did you vote to override the Mayor's veto of the 9-member, Charter member? A. I believe I did if I remember correctly.

Q. In your view what would have happened if the 9-member amendment and 11-member amendment had went

Q. And also Fitzmorris's ticket in 1966? A. Yes, as I remember. As I recall I did.

Q. Is it generally less expensive when you run on tickets than if you're running comparatively by yourself? I mean is that the idea that you pool money? A. Yes. I think it's generally less expensive. Of course it depends on, you know it depends on how active the ticket is that you're on, and again it primarily depends on how many opponents and how much money they're spending against you.

Q. How did you raise money for a district campaign for Councilman? A. Well you ask your friends to assist you in helping you. You always have to put up a certain sum of money out of your own pocket.

Q. About what percent do you think, Sir, comes out of your own pocket? [39] A. Well that varies. If I remember correctly, I wouldn't be able to tell you percentage-wise, but I think most in the last election came out of my pocket if I remember correct.

Q. Do you conduct any fund-raising dinners or anything of that sort? A. No. No, I do not. I've never had a fund-raising dinner in my life.

Q. How large would you say the largest individual contribution given to you in your last campaign was? A. I can't remember what would be the largest one.

Q. Could you say approximately? A. I wouldn't want to approximate.

Q. In 1962 you indicated that you ran on a ticket headed by mayoralty candidate Comiskey. Were there any black candidates for councilman who were on that ticket? A. Not that I remember.

Q. How about in 1966 on the Fitzmorris ticket on which you ran, were there any black candidates? [40] A. On the Fitzmorris ticket?

Q. For City Councilmen on the Fitzmorris ticket. A. Not that I can remember.

Q. How about 1970? A. Not that I can remember. Of

course I have no control on who's on Mr. Fitzmorris's ticket or any other mayoralty candidate even if I'm on his ticket. That decision rests solely with the mayoralty candidate himself as to who he wants on his ticket. You understand that I'm sure.

Q. Do you recall in the three elections that you participated in and ultimately were elected whether any of the tickets headed by mayoralty candidates had blacks as councilmanic candidates on those tickets? A. Well there were black candidates for the City Council, but whether they were on the tickets or whose tickets they were on I don't remember. But there definitely were black candidats for the Council.

[41] Q. Did Moon Landrieu have a ticket in 1970? A. Yes.

Q. Were there any black candidates for City Council on that ticket? A. I don't remember whether there were or not. I was not on Mayor Landrieu's ticket in 1970.

Q. You served on the City Council your first time from 1962 until 1966. Is that correct? A. Yes, uh, huh.

Q. Do you recall during that period various sit-in demonstrations by black people in the City of New Orleans relative to obtaining service at lunch counters? A. I don't recall. What you mean, lunch counters in the downtown area?

Q. Yes. A. I don't remember precisely whether they were in that period of time, but there have been sit-down or demonstrations at lunch counters in the downtown area. It's one of the reasons why I voted for the public accommodations law.

[43] Q. What action did the City Council take during that period 1962 to '66 relative to service of blacks at lunch counters? A. Well I can't remember they had any demonstrations in 1966 or from what year?

Q. From 1962 until '66. A. Well I don't remember whether they had any demonstrations during that period of time. I know there have been demonstrations, but I don't know whether they were in that period of time, and I

don't remember what, if any, action the City Council took. The only action the City Council could take would be to legislate.

Q. But to your knowledge they didn't do that, did they? A. I don't remember whether we passed any legislation at that time or not.

Q. Do you recall that during that period the City Hall cafeteria refused to serve blacks? A. When I first got on the City Council no blacks were eating in the cafeteria. [44] I don't know whether it was result of them not being permitted to eat or not. But we did play a part, members of the City Council, at that time with the previous Mayor Schiro in opening up the cafeteria to all races, and that was done you know by conferences with the Mayor as I remember.

Q. Do you recall when Reverend Avery Alexander, a black leader, was arrested in the City Hall cafeteria for attempting to receive service? A. I remember that instance, but I don't remember when it was. Incidentally Reverend Alexander supported me prior to that incident, if it was in 1962, between 1962 and 1966, and supported me subsequent to that incident.

Q. Were you ever a member of an organization called Save Our Schools? A. No.

Q. You're not familiar with that organization? A. No. I'm not even familiar with it.

Q. Do you recall when the public schools in New Orleans were first desegregated? [45] A. I don't recall the dates.

Q. Did you take any public positions on that issue, the issue of the desegregation of the schools? A. I don't recall whether we took any public position at that time or not. But we have no jurisdiction whatsoever over the public schools in the City of New Orleans. It's a public school system, is under the School Board, the Orleans Parish School Board, whose members are elected, and it's an independent body from the City Government and from the City Council. And I might add they act very independently from the City Council.

Q. Would you say you followed essentially the same criteria in developing the first City Council plan as you did in adopting the Moreau plan? A. Yes. But I think in adopting the Moreau plan we were more familiar with it at that time than we were previously, and I think we hurriedly, too hurriedly, passed the first plan. As [46] I look back on it right now we acted too hastily in supporting that plan.

Q. Would you admit at that point that the first plan was in fact racially discriminatory? A. There was no intention. In supporting the first plan there was no intention to make it racially discriminatory, and I don't believe that it was racially discriminatory. I think what was wrong with the plan is that it was not the contiguous, and another thing that was primarily wrong with it was that it divided Algiers, which is the area across the river, into three separate districts, and I think that's wrong. I think Algiers should be under one district, and I think it was an error for us to do it, but it was not racially discriminatory, nor was it ever intended to be racially discriminatory.

Q. My question was, and you may have answered it, but this will clarify it. My question was, would you admit that it [47] was racially discriminatory in effect? A. No. I think what was wrong with it was what I previously said.

Q. Are you aware that jurisdiction under Section 5 of the Voting Rights Act, under which that plan was objected to by the United States Attorney General, extends only to the question of racial discrimination and redistricting? A. I don't recall that by number. Would you tell me what that decision says?

Q. That's Voting Rights Act under which the first plan was objected to. A. And what does it say, particular provision that you refer to?

Q. All right. Are you aware that the Justice Department, when considering submission of a voting change

such as the first City Council plan, is limited to considering only question of racial discrimination in determining whether to object or not to object to that plan? A. As I understand it, the primary consideration is whether it dilutes a minority [48] voting strength. Is that what you had reference to?

Q. Yes. I just wanted to get your appreciation of that. A. Uh, huh.

Q. And you would contend that the first plan did not dilute the black voting strength? A. I don't think the first plan diluted black voting strength. I think again the flaws in the first plan, one of the biggest flaws was that it did not provide for contiguous districts, and it wrongly divided Algiers into three sections. Should not have done that. Algiers as a whole should be in one, one district, and I think it was erroneous for the City Council including myself, to have approved a plan that divided Algiers into three separate parts.

Q. Does the splitting up of Algiers into three separate parts really have anything to do with dilution of the black voting strength? [49] A. It was not intended to and I don't believe that it does.

Q. Is it your appreciation that that was the concern of the Department of Justice in objecting to the first plan? A. If I remember correctly that was what they said in their letter.

Q. That they believed that was racial discrimination? A. I don't know whether they believed it. That was what they said in their letter.

Q. That they believed the splitting up of Algiers was racial discrimination? A. I think the whole plan diluted black voting strength. I think that's how they put it. I don't remember the precise words.

Q. You would say also that the second plan does not dilute black votes? A. Positively not.

Mr. Friends: OK. I have no other questions.

Mr. Stoner: I have no questions.

Deposition of John D. Lambert, Jr.,

(Excerpts)

October 3, 1973

[9] Q. Do you know the percentage of registered voters, black and white? A. No. I had gotten that information, let's see, maybe about a couple of years ago because we had requests—well, it was all, you know, getting all the information that we could relative to these redistricting things. I have the impression it's somewhere around between thirty-five and thirty-eight percent.

Q. Black registered voters? A. Black registered voters. I think that's about right.

Q. When did you get these figures? A. Well, let's see, when we first started redistricting, and we came up with some plans, Paisant had been asking us to [10] come and see him upstairs where, you know, his staff works, and I went and looked at them, and he had population figures, black population figures and white population figures on a map.

Q. Did anybody ask him to put them on the map, do you know? A. No, I don't know. I think he just did all of this in connection with preparing his plans, you know, making recommendations to the council.

Q. Do you know why he prepared registration figures by race? A. No, I don't know why he prepared registration figures, but, initially, he prepared population figures, only. That was the first thing we looked at. As a matter of fact, the map that you have in Court, the one you had on the board there was with the black dots and white dots, it was the first map that I had seen, you know, that had anything to do with designation of the races.

Q. When did the voter registration statistics become available? [11] A. Well, they became available about the same time we started getting requests from different groups that were interested in the involvement. I know that some blacks had called me up as to whether or not

they could get information from me relative as to what the statistics were, the whole gamut, the voter registration, everything, they wanted maps, voter registrations, they wanted black and white population figures, you know, and when I first went up and looked at the proposed plans that Mr. Paisant had at that particular time, and he had already had, as I recall, the population figures, at about that particular time I thought it might be important for him to get maybe some other figures, too, because people were asking me. As a matter of fact, I think Rev. Alexander was one of the people who called me at City Hall and wanted information, and I turned him over to Jim Paisant, told him he would give him anything he wanted as far as I was concerned.

Q. Did you ask Mr. Paisant or his staff to secure the registration figures? A. I was interested in having the information because I thought that that was going to be coming up, you know, at our hearings, yes. Between the time that the first plan was introduced or was being developed, let's say, and the time we went to our hearings on the first plan, I was interested in having voter registration figures for the whole City.

Q. Were they made available? A. Yes, I think they were made available.

Q. Were they used? A. To be perfectly honest, I didn't really worry about them. I don't know whether the other councilmen worried about them or not. The major concern was coming up with what we thought would be a valid, you know, acceptable plan, and we were looking more at population than we were of voter registration.

Q. Did you look at voter registration at all? A. Yes, but I'd say it didn't play any factor, [13] any serious factor.

Q. What context were they looked at and examined? A. More from an information viewpoint than anything else, that's all.

Q. What purpose did the information serve? A. Just to tell me, you know, what the voter registration was in my district.

Q. Why did you care about that? A. I was interested in insuring that if I accepted the plan that I like, you know, that, particularly, Philip Ciaccio and I, and Clarence Dupuy had prepared as far as our common boundaries were concerned that affected me, that I didn't create any dilution of the black voting structure in my district.

Q. What is your definition of dilution of black voting structure? A. I didn't want their voting strength to be less than what they had under the plan that I had gotten elected under.

Q. How about more? A. I didn't have any objection going more.

* * * * * * * * * *

[20] Q. For the record, Councilman, are there any black City Councilmen? A. No, sir.

Q. To your knowledge, have there ever been any black City Councilmen in New Orleans? A. No, sir. I don't know about the reconstruction days, but, you know—

Q. But in modern history there were none? A. No.

* * * * * * * * * *

[26] Q. What other factors or considerations, standards, did you use in analyzing the redistricting plans, both the first time and the second time? A. Well, the way I looked at the whole redistricting picture was that, number one, I didn't think we had to do a great injustice to the districts we presently [27] had. In other words, I didn't believe we had to scrap them and come up with an entirely new plan. Number two, I didn't believe it was mandatory for councilmen to run against each other. I didn't think that was a mandatory factor to come up, and that's what you would do if you would scrap all the plans unless you come up with something else, but more importantly, it was the positive factors that I didn't want to get involved with

any gerrymandering, so to speak, in order to create all white districts. I didn't want to dilute any population strength, realizing you have to do it to increase population strength in some areas, but I didn't want to get involved in that. The other factors that had come about that were of consideration to us, you have to understand that this is the first time we've gotten involved in redistricting, and we were learning what the guidelines were, you know, as we went along, and the compactness of [28] a district was a factor that we had given serious consideration to. Then we took a look at what I considered the guidelines that were established to a certain extent by the Fifth Circuit, the Senatorial District problem that we had here, you know, that was the first time I really took a look and studied their districts as opposed to that particular legislation. All of these played a factor in the determination.

Q. Why was it your opinion that you didn't need to scrap the old plan? A. Because I didn't feel redistricting required, you know, simply to scrap the districts you already have. My theory was, and I firmly believe it, that if you can come up and satisfy all the other requirements of the Voting Rights Act by simply an adjustment of the boundaries that you could do that.

Q. What are the requirements of the Voting Rights Act? A. Compactness of district, no dilution of the black, you know, or any population [29] strength, one man/on vote type concept.

Q. You, also, indicated one of the factors was you believe that there was no need for incumbents to have to run against each other? A. That sort of ties in with the idea of scrapping the entire concept, you know. People were coming up with plans that said, you know, just scrap the entire plan, let's go ahead with a new one. Steimel already had done that in the House of Representatives race and tried to do it in the Senate race, and the Fifth Circuit

didn't approve of it, but I don't necessarily believe we had to if you could meet all the other requirements.

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[50] Q. Were you familiar with the Steimel House of Representative plan— A. Yes, sir.

Q. —for the Parish of Orleans? A. Yes, I saw maps and so forth.

Q. In your judgment could it have been used as a basis for redistricting the City councilmen's seats? A. I guess anything could have been used as a basis.

[51] Q. How many House of Representative members are there from Orleans Parish, do you know? A. I think there are twelve.

Q. Do you know how many of them are black? A. Four.

Q. Do you know how many black representatives [52] there were from Orleans Parish four years ago? A. One.

Q. How many state senators are black, if any? A. None.

Q. Do you recall reading any publications as to how many black senators there might be if the Steimel senatorial plan had not been reversed by the Fifth Circuit? A. No.

Q. Were the public hearings held by the City Council on the question of redistricting? A. Yes.

Q. When were those held? A. Well, before the adoption of the first plan and before the adoption of the second plan.

Q. Did the persons who attended those meetings speak on the question of redistricting? A. Yes.

Q. What kinds of persons, what kinds of organizations? A. We had people from all walks. Particularly for the first plan, we had a great number of people from Algiers. I think [53] the first plan originally proposed had split Algiers in two, if I'm correct. They didn't think Algiers should be split up. A lot of blacks spoke, black organizations came and spoke.

Q. Was there a consensus of what the blacks wanted? A. The blacks, yes, the consensus was they represented

forty-eight per cent of the population, and they felt they should have an opportunity to get a black in the City Council.

Q. Did they advocate? A. They wanted districts created, you know, to reflect that.

Q. What types of districts did they want created? A. Black districts, or they did not want any dilution of any of their voting strength or population strength.

Q. Did they speak on the question of increasing the size of the City Council? A. Yes, a lot of them spoke to increase the size of the City Council while we were having hearings on the redistrictings, only by vote, you know, by vote of the [54] population

Q. What kind of increase of the City Council did the people speak of? A. Nine and eleven.

Q. Is that at-large or single member districts or what kind of plan? A. There were several plans that were proposed, I don't recall whether or not they were all proposed at the hearing, you know. We received a lot of this in mails and things like that, and by letters which were filed and so forth. By and large what they wanted, a great number of them wanted all districts and no at-large.

Q. Do you know why? A. Because they felt they could get, you know, smaller districts that way, and allow, I guess, more blacks to be elected to the City Council.

Q. Do you know what their antipathy was towards at-large? A. They did not favor at-large candidates.

Q. Do you know why? A. Because they felt they couldn't elect any- [55] body at-large, I presume.

Q. Do you share that feeling? A. No, I don't think so. I think they have an opportunity to elect at-large candidates.

Q. What do you base that judgment on? A. Recent attitude of the population, you know, some of the more recent elections.

Q. For instance? A. Well, Judge Morial's election. He ran against a strong white and got elected to the Court of Appeals. Israel Augustine ran for re-election against a real strong white attorney who was very popular and got elected.

Q. Elected to what? A. To the Criminal District bench, at-large. Dr. Spears got elected to School Board, against white competition.

Q. At-large? A. Yes.

Q. How many members of the School Board are there? A. I think there are seven or nine.

Q. How many members of the Criminal Court are [56] there, judges of the Criminal Court? A. They go from Section A through G or H.

Q. How many judges of the Court of Appeals are there that Judge Morial was elected to? A. I think there are five or six in the Fourth Circuit.

Q. Was any ordinance proposed that would have created an eleven single member district plan? A. No, I don't think. The ordinance doesn't create it, the ordinance only submits it to be approved, you know, by a voter referendum.

Q. Was any ordinance proposed that would have created a referendum electing an eleven member district plan? A. I don't think so.

Q. What about a nine member district plan? A. Yes, nine member district plan was.

Q. Nine single member districts? A. Nine districts and two at-large.

Q. I see. Who introduced that? A. I think Councilman Sapir introduced the eleven.

Q. When you say eleven, you're talking about nine single members and two at-large? [57] A. Yes. I think I introduced it along with him, the nine member plan, I'm not too sure.

Q. That's seven districts, two at-large? A. Yes. There were three sets introduced. Judge Fedoroff ruled that two of the ordinances could not be voted on at a Democratic

primary election, at the general election, so, then, we went back to the drawing board again and came up with another set of ordinances. The nine members, that's seven and wo was vetoed by the Mayor. The result was that only the eleven men plan, that is nine and two went to the people for a vote in a general election. That was rejected. Then, subsequently, we went back again and passed a nine member plan which would be seven and two, and that went to the population, to the people, and that was rejected. Then we came back and went to work on our redistricting ordinance, the results of which are now in litigation.

Q. Did any councilman initiate an ordinance going into the question of a nine single [58] member district plan or eleven? A. Single member districts? Not that I know of.

Q. Did persons— A. I don't recall.

Q. Did persons attending the public meetings held on the question of redistricting urge such a position? A. Some did, yes. I think it might have been Rev. Alexander or maybe A. L. Davis.

Q. Were they black? A. Yes. He had proposed an eleven man plan, one at-large, I think that was the plan he had come up with.

Q. Did any councilman put that in ordinance form? A. No, sir.

Q. Do you know why not? A. No, I can't speak as to why the rest of them didn't. As to the way I felt, I sort of felt that the two at-large candidates or even one at-large, but some at-large influence was a necessary thing on the Council because then he depicts the attitude of the entire City on different projects rather than just [59] a parochial attitude as to what I might want for my district, you see.

Q. So the— A. It's sort of a balancing. The best type of balance you can come up with short of the congressional type set-up with a five councilman-type legislature. That was the philosophy when it was first developed.

Q. When was it first developed? A. The commission developed the charter back in the early '50's.

Q. So, it's a twenty year old philosophy? A. Yes. I think it is, you know, relatively good thinking.

Q. There were ordinances calling for referendum elections on a nine/two and seven/two plan? A. Yes, sir.

Q. They were both adopted by the City Council? A. Both ordinances were adopted, but the referendum was defeated.

Q. At the time of the passing of those two ordinances did they pass the same day, do you recall? [60] A. The first two did, and then Judge Fedoroff threw them out. The second two did, and then they may have vetoed one, and then the third one was by itself.

Q. At the time the two were passed prior to the Mayor's vetoing of one, was there any discussion in the City Council among the City councilmen as to what the impact would be if both measures went on the ballot and both measures were adopted, radified by the people? A. Yes, that was a problem that we had discussed on the Council Board. The only consideration, the major consideration I had in my mind relative to both of them going to the people at the same time and letting them make a choice, we would have to have them understand what they were voting for, you might have to have some way of explanation to make sure they know they can go in and vote for both of them, then the problem came out what if both passed, you see, and I think the City—I don't know what the position the City attorney had, I [61] think he said the eleven member plan expansion over the nine members would take preference, but I'm not sure about that, you'll have to look at his files if you want to know that, but it was an opportunity to get it underway because I knew we were running under a short fuse. Then after we passed them both the Mayor vetoed them, we talked—I talked to the Mayor, I talked to the other members of the Council and although I voted to put both of them on the ballot at the same time, when we went to override the Mayor's veto, I wouldn't override it, I let the eleven go.

Q. Do you know why he vetoed it? A. Because he didn't want both on the ballot at the same time.

Q. Do you know why? A. He didn't want any confusion. He didn't want the people to be confused, and he feared maybe it wouldn't have an equitable chance of passing. You have to understand, we were asked first to put the [62] nine members on, you know, and that's what we did.

Q. As asked by whom? A. By members of the black community.

Q. Who? A. Well, Bob Collins came in and talked to me. As a matter of fact, the Mayor was the one who first mentioned expansion of nine, seven and two, I think it was at the meeting downstairs, that was the first one that was introduced. Then the blacks proposed to us an increase to eleven, so, we said, well, they were getting petitions together on that, and if they would have gotten ten thousand signatures they would have gone on the ballot at the same time, you know, so, we didn't put them through the trouble of getting ten thousand signatures when, obviously, a sizable portion of the population wanted to have it go on the ballot, you know, so—

Q. Did you believe a sizable portion of the population wanted the Council increased [63] to eleven single members or nine single members? A. No, I didn't think that the sizable portion of the population wanted that.

Q. In your judgment had the measures to increase the City Council to nine/two or seven/two gone to the people at the same time, wouldn't that have resulted in confusion? A. Well, it all depends on how you handled the public relations, you know, in explaining to them what was involved. After we passed it and we kicked it around, and the Mayor vetoed it, it was my philosophy that I knew we were going to come back with the nine men plan for the eleven man plan failed, I just knew that was going to be reintroduced, you know, that would be put on the ballot, so, I said we would just have to delay longer, that's all, and concede to the Mayor's veto.

Q. Isn't it true the ordinance calling for the nine/two and seven/two plan were proposed to be put on the ballot at [64] the same time in an attempt to dilute and split the votes of those persons, that part of the population that favored expansion of the City Council? A. No, because we had put the nine/two plan in first. You see, we had already put in the seven/two. The seven/two was introduced first, and then when I said before about the same time, they were passed the same time, but they weren't introduced the same time, we would have gone ahead with that.

Q. They would have gone on the ballot at the same time? A. It would have been on the ballot all by itself if nobody had come in and said, you know, we don't want the nine/two. One segment of the black community had come come in and asked us for a nine/two and asked the Mayor for a nine/two—I mean a seven/two, I'm sorry, that's what we, originally, spoke about, you see, and we put that ordinance in. Then another group wanted eleven, so, we put that ordinance in, you see. [65] It wasn't geared for the purpose of trying to defeat them, it was going to require an educational process, you know, to insure the voting public knew what they were voting on and the result might have been that, and that's why the Mayor vetoed it and that's why I wouldn't override his veto.

Q. At the time of adopting those ordinances did the City Council appropriate any money for the effort of public relations that you spoke about to be necessary? A. No, no. It would have to be through the news media, and editorial processes, and things like that, you know, sort of free advertisement.

Q. The question of expansion of the City Council to eleven members, nine/two, nine single member districts, two at-large, that went to the people in November of last year, is that correct? A. November of '72, that's right, that was, I think, the congressional elections.

Q. That measure was defeated by the people? A. Defeated, yes.

[66] Q. Did you speak in favor of that proposal? A. You mean speak on the Council floor for its adoption? No.

Q. Did any other Council member, to your knowledge, speak publically in favor of the adoption ratification? A. I was never asked to speak for it, either.

Q. Did you ever volunteer to speak for it? A. No.

Q. Were you aware of any organizational efforts on behalf of the passage of that ordinance? A. No, I really didn't see any organizational work behind it, you know, no one approached me, I didn't receive any information in the mail, I didn't receive any organizational work. I knew there were some organizations that were interested in getting it passed, but I didn't really see any P.R. work on it.

Q. Did you see any advertisements? A. It surprised me a little bit, I think there was—no, I didn't see any until I saw some advertisement or something in the papers, that's the first time I [67] saw it is when there was some evidence in the present litigation.

Q. In the complaint filed by the District Court for the District of Columbia one of the allegations is that there was considerable community efforts directed at this election, some organizations supported it, are you familiar with that allegation? A. Yes, sir, that's right.

Q. Do you know any organizations that supported it? A. I knew the black organizations supported it, you know, as I said they had, but I didn't find that as active of a movement, you know, to do a lot of P. R. work in relation to the community at large. Now, maybe the P. R. work was only directed in the black communities, I don't know, but as I said I didn't notice it predominantly in my district. There was some work being done uptown, I'm pretty sure about that.

Q. Is uptown black or white, do you know? A. It's sort of everything, but it was in the [68] black communities

uptown, I'm sure there was some sort of P. R. work being done. This is a lot of speculation as to what happens uptown. I've got enough problems in my district.

Q. Was the measure supported by black organizations than by white organizations? A. I imagine—let me say this, it was supported by black organizations.

Q. Do you know any white organizations that supported it? A. I don't know of any white organizations that took any stand one way or the other.

Q. Do you know of any white politicians that spoke out in favor of it? A. No, except for, maybe, Councilman Sapir, he may have, but I've never heard, you know, heard him speak.

Q. Subsequently, the question of increasing the size of the City Council to nine members, seven districts, two at-large, went to the people? A. Yes.

Q. Are you familiar with any organizational efforts to secure passage or ratifica- [69] tion of that ordinance? A. My answer to that question would be about the same as to the other one.

Q. Do you know of any white politician who spoke in favor at that time of expanding the City Council? A. No one except for the possibility of Councilman Sapir and the Mayor, I think.

Q. Do you know of any white organizations that supported that? A. No. I don't know of any white organizations that spoke for or against it.

Q. Did you take a position on it? A. Except for passing it on the Council floor, no.

Q. Were you in favor of the ratification of that to nine members? A. I could have gone with nine members, I said that. I didn't necessarily have any love for expanding it to eleven, one way or the other, but expanding the council to nine was a very distinct possibility for me, you know, and anybody who asked me that I told them that.

Q. Did people ask you that? [70] A. Well, just in conversation, you know.

Q. Any newspaper reporters ever ask you that? A. No.

Q. TV reporters? A. No. The only reason why that was, I find in looking at other City governments where the Council gets larger and larger and larger, the strength of the Mayor gets larger and larger and larger, and I'm not too sure, there should be a certain balance there, and I told them that, not that I had any words about him as a Mayor, but I just felt that, you know, expanding the Council too large gives too much strength to the Mayor.

Q. That measure was defeated as well? A. Both of them, yes.

Q. It was a closer election than the first one, was it not? A. I don't recall the figures. If you tell me when you read them they were closer, I could buy that. I presume they were, but I really don't recall.

Q. Would it be your observation that those [71] measures were supported by the black community and not supported by the white community? A. Well, it would be my observation that the measures were supported by the black community. I don't think the white community campaigned actively for or against it. I guess it would be fair to say the white organizations didn't campaign for it, but I don't recall them campaigning actively against it.

Q. How about the votes, would you have an observation as to how your voting went along those measures? A. I didn't look at the voting statistics to see how it was. I was a little bit disappointed in one area—no, I can't even say that, I didn't look at the votes, that is to analyze them, sit down and analyze them.

* * * * * * * * * *

[81] Q. Prior to your election to the City Council you indicated that you ran for the State Legislature? A. I ran, yes.

Q. In what year was that, approximately? A. I believe that was in '69. It was the summer of '69. The election was August or something like that, the election was in August and I lost.

Q. Who did you lose to in that election? [82] A. I ran in the field of nine and I came in third. Ben Bagert came in second, and Charles Elloie came in first, in the first primary.

Q. Charles Elloie is black, is he not? A. Yes.

Q. He came in first in the first primary? A. Yes.

Q. In the second primary what happened between Mr. Elloie, the black candidate, and the white opponent? A. Mr. Bagert won.

Q. Is it true in Louisiana that there is a majority vote required to win in the run-off primary? A. Oh, yes, you're talking about if two candidates run-off?

Q. Right. A. Sure.

Q. That's the purpose of the run-off, so that the majority of the voters must vote for the winning candidate? A. Well, what happens in the run-off election, if nobody gets a majority in the first primary, normally, the first and second [83] candidates run off in the second primary. I think that happens in most states.

Q. Were you active in Democratic Party politics prior to your running for political office? A. No.

Q. Are you a Democrat? A. Yes.

Q. Was there any general election in the contest for the legislative seat between Mr. Bagert and Mr. Elloie? A. Was there any what?

Q. General election. A. You mean was there a Republican or a candidate from another party other than the Democratic Party?

Q. Yes. A. No, not that I recall. I'm pretty sure there wasn't.

Q. Generally, in New Orleans winning the Democratic Party primary is comparable to winning an election in New Orleans? A. In most instances, yes.

Q. The Republican Party is very small? [84] A. It's just recently they started to place people in the various, you know, races.

Q. Are there any Republicans presently holding public office within the City of New Orleans? A. Not unless you can count Treen, I think he may take in part of the City.

Q. He's the United States Congressman primarily elected from Jefferson Parish, is that correct? A. Primarily from Jefferson, and then down in Lafourche Parish, Lafourche, Jefferson, and I think he takes in part of New Orleans, but I'm not too sure. I'm not too sure about that.

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 1495-73

PETER H. BEER, ET AL., Members of the Council of The City of New Orleans, Acting for and on Behalf of The City of New Orleans, *Plaintiffs*

v.

UNITED STATES OF AMERICA and ELLIOT L. RICHARDSON, Attorney General of the United States, Individually and in his Official Capacity, *Defendants*

Deposition of Jonathan A. Eckert

(Excerpts)

August 3, 1973

[63] Q. Did you ever start a district that started out in New Orleans East and come that way and along the lake front? [64] A. Yes, sir.

Q. Whereabouts did you end up? A. Canal Boulevard.

Q. And how many incumbent City Councilmen were in that district? A. Three.

Q. And how many of those were District Councilmen? A. Two.

Q. And what did you do with the balance in that concept? And this is a concept we're talking about, is it not? A. Uh-huh.

Q. What did you do with the balance of the lake front over to the Jefferson Parish line? A. That was combined with the district, which is essentially the same as the N.A.A.C.P. Plan.

Q. And wouldn't that necessarily have placed two or more incumbents in that district? A. Yes.

Q. How many did it place in that district? A. Two.

[65] Q. And were these District Councilmen? A. I'm sorry, three Councilmen.

Q. How many of them were District Councilmen? A. Two.

Q. Was that plan or concept worked down to a plan stage? A. Yes, sir.

Q. And was it submitted to the Councilmen? A. It was submitted to a Councilman who had requested it.

Q. And which Councilman was that? A. Councilman Sapir.

Q. And what did he do with that, do you know? A. He still has it.

Q. And when was this plan drafted? A. After the letter was submitted by the Justice Department rejecting the second plan.

Q. What did that plan do with Councilman Sapir's District B? A. It remained the same as that in the N.A.A.C.P. Plan.

Q. Did you consider in drawing concepts and plans the traditional and historical community of interest of neighborhoods [66] in the city? A. To the extent that it followed other factors which we indicated we considered of significance, and that would be geographical boundaries, et cetera.

Q. Do you believe there to exist a community of interest among the residents of Algiers? A. Yes, sir.

Q. What is that interest? A. Much of the Algiers area is similar in its economic patterns. They have similar problems with regards to transportation issues. I—I think essentially those would be my—

Q. Levee construction? A. Possibly, yeah. They might have the same interest insofar as levee construction as people who lived elsewhere along the river.

Q. Would you consider that the people on the lake front have community of interest? A. Yes, sir.

Q. What would that community of interest be? A. Again, I believe the similar socio-economic [67] patterns evidenced.

Q. Any other interests? A. I would say certainly the one I mentioned would be the main one that I sense in my mind.

Q. How about transportation? A. I don't think transportation is of such a concern with that—this area of the city—in other words, east bank— as it is on the west bank.

Q. The city is divided into how many wards? A. Seventeen.

Q. Which ward do you live in? A. Presently, Thirteenth Ward.

Q. Do people in New Orleans identify by wards? A. To a certain extent.

Q. Do they also identify by neighborhoods? A. Yes, sir.

Q. Which would you say they identify more with, if you have an opinion on that? A. Well, if you asked someone where they lived?

Q. Right. Would they be more inclined to say in the Garden District or the Thirteenth Ward? A. They would probably say Garden District, [68] Uptown, French Quarter; they might say Lower Ninth; they might say New Orleans East; they might say Ninth Ward.

Q. Is the Ninth Ward the ward that's identified with the Comiskeys? A. No, sir.

Q. Which Ward is that? A. To my knowledge, it was the Third Ward.

(Discussion off the record.)

Q. Are you familiar with the plan proposed by the Republican Party? A. Yes, sir.

Q. And did you draw that plan out? Have you run the statistics on that plan? A. Yes, sir. We made a check on one district.

Q. And why did you do that? A. We wanted to determine whether or not a black voting majority had been achieved in one of the districts they created.

Q. And had it been? A. Yes, sir.

Q. Did they report that it had been? Did you confirm their figures? A. I don't recall whether—frankly, I don't recall whether or not they included [69] voting statistics in the plan. We checked it out.

Q. Do you believe their population figures to be accurate? A. Substantially. Maybe a precinct here, a precinct there.

Q. When did you do this? A. Shortly after the Republican Plan had been introduced.

Q. This was before the second plan was sent to the Attorney General? A. Yes, sir.

Q. And before the second plan was adopted by the City Council? A. Yes, sir.

Q. Did that plan adhere to traditional ward boundaries? A. Essentially, no.

Q. What impact did that plan have on incumbent City Councilmen? A. I believe it possibly might have placed two incumbent Councilmen in the same district.

Q. Did you prepare that plan for submission to the City Council? [70] A. No, sir.

Q. Did you ever have a request to do so? A. No, sir.

Q. Do you know whether that plan was studied by the City Councilmen? A. I assume it was studied or I—you know, it's hard to say whether or not it was studied.

Q. Do you know what the Council's reaction to that plan was? A. At the public hearing, there was some—some question about the fact that Algiers had been placed with, I believe, the lake front area of New Orleans and there had been no channel—let's see what the word I'm looking for—at any rate, there wasn't any part of the city extending down to Algiers to provide some, you know, continuity. In essence, the district that had been created was one whereby Algiers sort of jumped over another district and was placed in—in with the lake front area as had been done with Algiers and the uptown area in the [71] present plan. There had been some discussion of that.

Q. In the present redistricting plan, Algiers jumps the river and goes up the river? A. Uh-huh.

Mr. Treese: Wait a minute. That's a little confusing. You mean the present system as it is existing right now?

The Witness: As it is existing right now, you have Algiers—

Mr. Treese: Right.

The Witness: —and you go across the river, of course, and you have a District B and then you go back to District—you know, it's kind of like playing checkers or leap frog or whatever. But the same thing, the same effect, was produced in the Republican Plan.

Q. In the first plan that was submitted to the Attorney General, Algiers was split into three other districts, is that correct? [72] A. Yes.

Q. Non-contiguous districts, is that correct? A. Yes, to the extent that Algiers really can't be contiguous per se with any other district.

Q. It has to at least go across the river. A. Yes.

Q. Do you recall any other comments directed at the plan proposed by the Republicans? A. There was some reference, I believe, to the fact that—I believe the Republicans, whoever it was that was present—I don't remember their names—had indicated that there would be some

problem in anyone who lived along the river or having a part of a district along the river representing feelings of people in Algiers. Councilman Dupuy took exception to that and said that his district extended to the river and that he had always been an advocate of a new bridge. I read some sort of comments in the newspaper by Councilman Sapir saying that he didn't think neighborhood interests were truly [73] served in the Republican Plan. I didn't hear him say that, you know, I just read it in the newspaper.

Q. Did the Republican Plan do violence to the maintenance of precinct integrity? A. Well, I noticed one precinct seemed to be split, but, no, I don't think it did violence to the precincts.

Deposition of James N. Pezant

(Excerpts)

August 3, 1973

* * * * * * * * * * *

[83] Q. And what difference would it make to becoming an ordinance whether or not two or more incumbent Councilmen were in the same district? A. Well, sir, if we set out and placed combined Councilmen in the same district, then it appears to me it would be—receive less acceptance among the members of the City Council.

Q. Why? A. I don't think anybody wants to—I don't [84] think any incumbent officeholder wants to run against another incumbent officeholder if it can be done otherwise.

Q. Did any Councilman ever tell you that? A. I have to say some Councilmen expressed preference not to—not to have this situation, but I can't say that any of them ordered me not to do this.

[85] Q. In the seven to nine conceptual plans that you drafted very early in this scheme of events, did you in

those plans seek to avoid placing two or more incumbent Councilmen in the same district?

Mr. Stoner: I object to the use of the word scheme.

Mr. Shurtliff: [86] Scheme of things; scheme of things of the reapportionment, the whole scenario of reapportionment.

Mr. Stoner: I still object to the word scheme.

Mr. Shurtliff: I'll rephrase the question, Counsel. It's not pertinent to my——

Mr. Stoner: It's implying there's something sub rosa here, and I don't think there's any testimony——

Mr. Shurtliff: There's more than one definition of the word scheme, and I meant nothing in denigration of the process. I meant it as a scheme of events, I did not mean——

Mr. Stoner: What you mean is a series of events.

Mr. Shurtliff: A series of events. I meant nothing in derogation of the City Council or this man.

[87] Mr. Stoner: I suggest we use the word series of events.

Q. Did you in drafting those conceptual plans seek to avoid placing two or more incumbent Councilmen in the same district? A. Yes, we did.

Q. And did any of those seven plans place two or more incumbent Councilmen in the same district? A. To the best of my knowledge, they did not.

Q. And in drawing these conceptual plans, did you dot the maps with the residences of incumbent City Councilmen? A. I don't know if we dotted the maps, but we were aware of the residences of the five—seven City Councilmen, yes.

Q. After the third round census material became available and you focused more particularly to a plan that would subsequently become an ordinance, did any of the plans drawn at that time place two or more incumbent Councilmen in the same district? [88] A. Are you referring to the first——

Q. The first. A. —ordinance? To the best of my knowledge, they did not.

Q. And did you dot those maps of those proposed districts with the residences of incumbent City Councilmen? A. Dot those maps. The map of the ordinance that we prepared, which Councilman—the map that was associated with the ordinance that we prepared for Councilman Moreau that he introduced as an ordinance?

Q. And the other maps illustrating other proposals that were given to Councilman Moreau at that time or considered by Councilman Moreau and the other Councilmen at that time time. A. Did we dot each of those maps with the residences of the City Councilmen?

Q. Right. A. I don't recall that we did because we didn't have to. We knew the residences of the—we the staff knew the residences of the City Councilmen.

[89] Q. Let me see if we can shorten this. Have you at any time dotted maps of proposed redistrictings with the residences of City Councilmen? A. Yes, sir. I believe we dotted one office map and maybe more than one, one office map with the residences of the——

Q. But generally you did not other than—— A. I didn't dot all the other maps, no, sir.

Q. I see. Now, the first plan was submitted to the Attorney General and an objection was interposed. A. Uh-huh.

Q. We then come to the second—— A. Ordinance.

Q. —ordinance. And was it between the time that the first plan was submitted and objected to or after that that the N.A.A.C.P. submitted a plan? A. The N.A.A.C.P. submitted their proposed redistricting plan at the first—at the public hearings associated with the first ordinance of Councilman Moreau.

Q. And—— A. I don't recall that organization appeared at [90] the second series of hearings, and we had this—we took this proposed redistricting plan under serious consideration.

Q. At what time? A. After it was submitted.

Q. The first time? A. Yes, sir, from then on.

Q. And did you run the population statistics for that plan? A. Yes, sir, because as the plan was submitted, it was a little tiny blue line—I guess mimeograph or multilith—and we put it on a big map. We made copies available to—we ran the population and the voter registration figures of the N.A.A.C.P. Plan and we gave copies to various interested parties, including your New Orleans City Council.

Q. And that plan was also considered the second time? A. Yes, sir. It was trans—that plan was transmitted by my staff to Councilman Moreau as one of four alternate plans for his consideration.

[91] Q. The second time? A. Yes, sir.

Q. And do you have copies of the other two plans—— A. Yes, sir.

Q. —that you transmitted to his office? A. Yes, sir. I think I referred to them earlier. I believe those were the plastic overlays that would be used with a standard city map.

Q. So there were four plans submitted to Councilman Moreau? A. The second time around.

Q. The second time. One of which was the—— A. N.A.A.C.P.

Q. —what is know as the N.A.A.C.P. Plan? A. Yes.

Q. Did the N.A.A.C.P. Plan place two or more incumbent Councilmen in one district? A. Yes, it did.

Q. And do you know how many? A. It placed two Councilmen in one district, the incumbent Councilmen of Districts C and D.

Q. And are those persons, to your knowledge, [92] District Councilmen or at-large Councilmen? A. Those are District Councilmen.

Q. Did either of the other two plans submitted to Councilman Moreau at that time place two or more incumbent Councilmen in the same district? A. To the best of my knowledge, one other plan, at least one other plan, placed two incumbent Councilmen in one district. But Mr. Eckert can answer that specifically.

Q. You don't know which district and how many? A. I don't know which districts they were. I'm very familiar with the N.A.A.C.P. Plan and I'm very familiar with the one that was passed. I don't have——

Q. Did you discuss the N.A.A.C.P. Plan with various Councilmen at any time? A. Yes, sir.

Q. Do you know what their reaction to that plan was? A. I—I think that would be speculation on my part, sir.

Q. Did any Councilman ever tell you what he [93] thought was wrong with that plan? A. What was wrong with it? No, not—no Councilman told me what was wrong with the plan.

Q. Did Councilman Moreau ever tell you what was wrong with that plan? A. To the —Councilman Moreau——

Mr. Treese: Are you using this term did they tell you what was wrong with it—would you please define for us what you mean when you—it assumes that the witness knows what was wrong with it. What was wrong with the plan as you mean it?

Mr. Stoner: Well, as I understand the testimony, there were four plans submitted. Now, what you're really saying is there's apparently something wrong with three of the plans, is that correct?

Mr. Shurtliff: Well, I asked the question and I'll rephrase it.

[94] Mr. Treese: All right.

Q. Did Councilman Moreau ever indicate to you why he didn't introduce the N.A.A.C.P. Plan? A. Did he indicate to me why he did not? I gave Councilman—we gave Councilman Moreau four plans that we thought again had a fairly good chance of—a chance of being given affirmative consideration by the Justice Department or the Attorney General's Office, and he selected the one that became an ordinance. I don't recall whether he expressed anything wrong with any of the other three plans.

Q. Did he indicate why he selected the plan that he did over the others? A. To the best of my knowledge, Councilman Moreau thought that this plan had a better chance

of passing the City Council and still getting favorable consideration by the Justice Department.

Q. And did he indicate why he thought it had a better chance of passing and becoming [95] an ordinance? A. Well, you're asking me to say what was in Councilman Moreau's mind.

Mr. Stoner: No, I object to this. He has not asked you what was in Councilman Moreau's mind.

The Witness: Okay.

Mr. Stoner: He just asked you one question, did he express an opinion to you. It's a yes or no answer, it would seem to me.

The Witness: All right.

A. Yes, he expressed an opinion.

Q. And what was his opinion? A. That he would prefer not to place two incumbent Councilmen in one district.

Deposition of Johnny Jackson, Jr.

(Excerpts)

October 2, 1973

[35] Q. Mr. Jackson, SOUL, is that a black organization? A. Right.

Q. And the purpose of that organization was what? A. Originally, it was for to elect black candidates and to participate in the political dates and to participate in the political campaigns. I no longer am a member of that organization.

Q. Do you know what its purpose is now? A. It's to participate in political campaigns.

Q. And is it still a black organization? A. Yes.

Q. Would you address the court reporter? A. Yes, it's still a black organization.

Q. Mr. Jackson, you stated that you attended City Council meetings and spoke about the question of expanding the City Council to eleven members? A. Right.

[36] Q. And that was eleven single member districts? A. Right.

Q. To your knowledge did any councilman support that position? A. If there was one councilman who did, it probably was Councilman Sapir, but I don't know if he was talking about eleven separate districts or an eleven member council which would include maybe nine separate council districts and two councilmen at large.

Q. Ws any ordinance proposed that would have created an eleven single member districting—— A. No, originally there wasn't an ordinance at first that was going to have an eleven member district, but because of the black community trying to push a referendum to enforce them to put an eleven member plan to vote——

Q. Did that question ever go to the voters, an eleven single member plan? A. No.

Q. You ran for the legislature one time? A. Right, it's a new district.

[37] Q. Do you know who formed that district, who created that district? A. My understanding is that that was created from a special master appointed by the courts, I think, Ed Steimel.

Q. How long did you campaign? A. For that district?

Q. Yes. A. I must have campaigned three or four months for it.

Q. How did you campaign? A. Well, what I did is basically I want to, you know, people in the district and attempted to get their support. We had suppers and parties to raise money and to pay for the campaign expenses and I was someone well known in that area and I got the support of one of the political organizations at that time which I was in disagreement with, but I got the support of SOUL and the Ninth Ward Voters League.

Q. Is the Ninth Ward Voters League a black organization? A. Right.

[38] Q. Did you go campaigning door to door? A. To some degree, yes.

Q. Did you go door to door in the white neighborhoods? A. Yes, I did.

Q. Did you go door to door in the black neighborhoods? A. Yes.

Q. How many candidates were there for that seat? A. Thr were originally two blacks, myself and a Mrs. Gaines in the run-off; general election, there was a republican.

Q. Was the republican—— A. The republican was white.

Q. There were just two candidates in the primary election? A. As I recall, yes.

Q. And both black? A. Right.

Q. What percentage of the vote did you receive in the general election? A. As I recall, I received the black community, something like seventy-five percent of the vote and in the white community, I think it was closer than that in most [39] white precincts. I lost some precincts in the white community. I think about half and half——

Mr. Treese: Did you say half and half?

The Witness: Yes.

A. The problem is he was republican. If it was a democrat, I probably would have lost. I would have lost by—I would have split, I would have lost by a greater margin.

By Mr. Shurtliff:

Q. In what areas, in the white areas? A. Yes, predominantly the Eighth Ward.

Q. You spoke earlier about tickets. A. Yes.

Q. Who puts tickets together? A. Most often times the mayor does and political organizations.

Q. Do you have tickets for offices other than City Council and mayor? A. Oh, yes, right. If there's an election where you have—all the offices are generally placed up for election are placed on the [40] ticket.

Q. Does SOUL put tickets together? A. Yes, they put tickets together.

Q. And candidates for mayor put tickets together? A. Oh, yes.

Q. What other organizations put tickets together? A. Your various people who are running for office, respective

councilmen, incumbents tend to put tickets together and do put tickets together.

Q. Are there other political organizations? A. Yes, across the city, right.

Q. Could you name some? A. The RDO, Record Democratic Organization, the League of Good Government, the public elected officials put—parochial elected officials put together tickets, OPPVL.

Q. What is that? A. I don't know.

Q. Is it a white or black—— A. It's a black organization. Most organizations put together tickets, political organizations.

Q. Are any of the organizations integrated [41] organizations? A. Not to my knowledge.

Q. Did Judge Augstine run on a ticket? A. Yes, he ran on the mayor's ticket and as a consequence of that, it was picked up on other people's ticket.

Q. What other people's ticket? A. As I recall, like, for instance, the RDO's people of New Orleans which is basically administration type people.

Q. Is that white or a black group? A. White. The various—what's the name of that—well, Bold Coup, SOUL, the Crescent City Voters League.

Q. Is that a white or black group? A. Basically white group, it is a white group. The Council of Good Government or the League of Good Government.

Q. Did Judge Spears run on a ticket or Dr. Spears? A. Dr. Spears. Yes, he was endorsed.

Q. By whom? A. Well, technically you couldn't endorse him, but he was carried on tickets because it's supposed to be a nonpartisan type [42] of election, but there were tickets out with his name on it. I don't think you could endorse him publicly.

Q. Was he carried on the tickets of white organizations? A. Yes, white.

Q. Was he carried on the tickets of black organizations? A. Right.

Q. How about Judge Morial? A. Same thing.

Q. Did you run on a ticket? A. My own, for my district.

Q. Were you carried on any other tickets? A. Only the black organizations.

Q. Are you familiar with Mrs. Gloria Taylor? A. Yes.

Q. Do you know how many times she's ran for the legislature? A. Twice.

Q. Do you know whether she was carried on tickets? A. Her own ticket that she put together for her district.

Q. Has she ever been carried on a white ticket, [43] to your knowledge? A. I can't recall.

Q. Do you know any other black candidates other than Judge Augustine, Judge Morial, Dr. Spears that were carried on white tickets? A. I can't recall any.

Q. Mr. Jackson, do you know any purpose or any function that wards serve in the City of New Orleans? A. not really. I've been hassling with that problem myself. I guess it's just a hysterical thing and that's all. As far as any function as such, no, because I don't know of any parochial office or elective office that's confined to any particular ward.

Q. Do legislative districts follow ward lines? A. Not really, I cross my district—my district takes in two wards, portions of two wards and they don't follow the ward line. Louis Charbonnet's district takes something like portions of five different wards, so, I don't think there is any pattern to follow concisely ward [44] lines.

Deposition of Philip C. Ciaccio,

(Excerpts)

October 3, 1973

[15] Q. You say you didn't want to dilute anyone, black or white, dots that mean that you wanted to maintain the status quo? [16] A. I'd say that the consideration insofar as I'm thinking, now, District E was concerned, assuming I had 17,000 population that had to be moved into another district, I, certainly, didn't want to move 17,000 black voters out of the District E into District D and I felt this

would certainly be something that would be subject to criticism, attacks, etc., nor did I want to move 17,000 white voters out or 17,000 people because we're not talking about voters, as this would probably fall in the same categories, so, insofar as I was concerned with regard to District E, I was looking at what would be a reasonable geographical line, and it so happened that the population ratios pretty much would be fairly equal, black and white as if you drew an ordinary straight line moving eastward from, let's say, Franklin Avenue, which would be the general boundary line. I was quite conscious of the fact that if I moved, for instance, the Desire Housing Project, [17] which is totally black, out of District E into District D that I would certainly be accused of doing something that was racially motived. There was no attempt to do anything like that. I felt that my district had about a 50/50 population, white and black, and that it was reasonable to attempt to maintain this.

Q. Would you say that was a consideration of some of the other councilmen, also, in terms of the other districts? A. I would imagine that since part of the submission of the Justice Department required information both as to population and as to voting strength, that these factors or these numbers were something that each individual councilman at least had reference to. Whether this was an overriding consideration, I sincerely doubt, but I don't think they lived in a vacuum and didn't know what the population ratios and the voting ratios would, ultimately, be because it was part of the information that had [18] to be furnished.

Deposition of Cecil W. Carter

(Excerpts)

October 4, 1973

[3] Q. Mr. Carter, would you please state your name and address for the record. A. I am Cecil W. Carter, Jr., and I live at [4] 1665 Sere Street, New Orleans, Louisiana 70122.

Q. And, Mr. Carter, what is your present occupation? A. I am Executive Director of the Human Relations Committee for the City of New Orleans.

Q. And is that a city position or a private organization? A. It's a city position I am a member of the mayor's staff.

Q. Are you appointed to that position by the mayor? A. I am.

Q. And how long have you held that position? A. I have been Executive Director since September of 1970 but I have been employed in the Human Relations Committee Office as either a Deputy or Executive Director since September of 1970. I have been Executive Director since 1971, I'm sorry.

Q. Since September, 1970, in other words? A. Yes.

Q. In other words, you have been in that [5] position for about three years? A. Yes.

Q. And what was your occupation or what position did you hold prior to going with the Human Relations Committee? A. For one year prior—the year July, 1969 to July of 1970 I was director of—I was called the training manager working for the Royal Sonesta Hotel which was to implement a job contract, a manpower contract that the hotel had with the Federal Government to employ the so-called hard core unemployed.

Q. And prior to that what position did you hold? A. For two years prior to that I was employed at the Urban League of Greater New Orleans as coordinator of veterans affairs which was a job development and placement kind of activity primarily. For three years prior to that I was a Welfare visitor in the State Department of Public Welfare. For two years prior to that I was youth secretary at the Dryades Street [6] Y.M.C.A. here in New Orleans. That is all.

Q. And what is your educational background may I ask? A. I have a bachelor's degree from Dillard University in New Orleans.

Q. Now, could you briefly describe your duties on the Human Relations Committee at the present time? What does your position entail? A. The Human Relations Committee is an advisory group, an advisory committee of twenty-eight citizens ordained by the City Council in 1968 to advise the mayor and the City Council on matters dealing with human relations, and I'm the staff person to that committee and to the mayor. We devise programs and projects and we seek to improve the human relations in the city. As well we do some social research and planning, and we do crisis intervention, conciliation and there is other kinds of related activities.

[13] Q. Now, did you discuss any ideas that you might have about redistricting of the city with any representatives of the council research staff? A. Yes, I did. I did have a discussion with Mr. Jim Pezant.

Q. And when did that occur do you know? A. It was I believe in the spring of this year, I don't recall it exactly.

Q. In the spring of 1973? A. That is right.

Q. And where did that discussion take place? A. In the office.

Q. And what was the substance of the discussion? A. As I recall the discussion centered around the questions that I raised of him as to why the City Council did not actively support the two referanda that were previously submitted to the citizenry to expand the size of the City Council, increase the size of the City Council.

Q. And what was the substance of his remarks? [14] A. As I recall he had the same kind of questions himself. He indicated that the first proposition that was offered which would have increased the size of the Council to an eleven man body, providing for a Council of eleven of nine districts with two running at large could have resulted in a districting plan that would have enabled the incumbent to run in separate districts while providing for four additional districts that would be more or less up for grabs. That it expectedly could have had any number of those four remaining won by blacks which expansion

plan would have perhaps been a satisfactory arrangement for most people who were concerned about it or who had expressed concern about redistricting. Neither of us really at that point could understand why the councilmen did not actively support that referanda feeling that support may have provided for the passage of the plan by the citizenry.

[15] Q. Now, is that the only discussion you had with Mr. Pezant? A. No, we did also discuss the other proposition that was subsequently put before a vote to expand the Council to a nine member group, and our conclusions were as I recall much the same though it would not have been as good as the nine and two plan. When we began to talk about the plan that has now been submitted Mr. Pezant admitted quite frankly to me the plan was drawn so as to assure that no incumbent would be pitted against each other. I expressed at that time to Mr. Pezant my feelings on the matter and suggesting that such a plan would by protecting the incumbent councilmen have a racial discriminatory effect in my opinion.

[41] Q. You stated that in your position as Executive Director of the Human Relations Committee that part of your job is to advise the mayor of various problems concerning Human Relations and I believe you also stated you monitor employment practices? A. Yes.

[42] Q. Do you have statistics on that? A. Yes.

Q. Do you have those with you? A. I have some of them with me, yes.

Q. May I see those please? (Handing same.) This first sheet you have here dated 6-14-73 explain what this is?

Mr. Stoner: Could we have it identified for the record. You will be attaching this as an exhibit to the deposition?

Mr. Friends: Yes, I will. Please mark this Exhibit 1.

(Thereupon, the reporter marked the exhibit as requested.)

The Witness: I have a page missing and I'd like to go back and get the full and correct copy.

(Recessed for a short time.)

By Mr. Friends:

Q. Could I see that document? A. Yes.

Q. Mr. Carter, would you explain what the [43] document described as Exhibit 1 is? A. This is a departmental breakdown of city employees as of 6-14-73.

Q. How is that broken down? A. It's broken down by departments and in some instances division within departments.

Q. Is it also broken down by race? A. It's broken down by race and that is all.

Q. Do you have other documents? A. Yes, I do. I have a similar breakdown by department and by race as of the date 8-1-73.

Mr. Friends: I would like to get this marked Exhibit 2.

(Thereupon, the reporter marked the exhibit as requested.)

By Mr. Friends:

Q. Is that the same as Exhibit 1? A. Yes, it is except it's about a year apart it's comparative.

Q. Just an updating? A. That is right. Exhibit 1 is the latest of such breakdowns that we have been able to compile. I also have a breakdown [44] showing the rate of increase of blacks in employment in city government on a rather regular basis dating from 5-15-67 through 7-12-73 and it's broken down not by departments but by date and showing the number and percentages of the blacks employed.

Q. City government as a whole? A. That is right. That is in the classified service, that is in the Civil Service positions.

Q. How do you compile these statistics? A. Exhibit 3 the sequence of black-white employment and racial and

classified service dating from May of 1967 was compiled by and within the Civil Service department of the city and was made available to me here lately this summer. As a matter of fact, the departmental breakdown by race Exhibits 1 and 2 is data that we compiled from a computer printout that we had requested through our office from the computer. It comes out of the finance department and it's rather [45] complicated.

Q. This is from the payroll? A. Yes.

Q. Do you have further statistics concerning employment in the city? A. I think those that you have would most clearly indicate what the employment patterns of the city government are as regard to race. I have other kinds of breakdowns but they are in office kind of material which in my opinion really would not help.

Q. This does cover it for the city government as a whole? A. Yes.

Q. As of the dates indicated? A. Yes.

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DEPARTMENTAL BREAKDOWN OF CITY EMPLOYEES - 6/14/73

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	OTHER/%
	ALCOHOL SAFETY ACTION PROGRAM	30	14	46.7	16	53.3	
9621	ASAP	21	8	38.1	13	61.7	
9671	ASAP - Traffic Probation	9	6	66.7	3	33.3	
3011	AVIATION	64	35	54.7	29	45.3	1/2 O
	CHIEF ADMINISTRATIVE OFFICE	48	40	83.2	7	14.8	
0351	CAO	2	2	100	0	0	
0352	Planning Division	16	14	87.5	1	6.3	1/6...
0353	Operations Division	19	17	89.5	2	10.5	
0354	Federal Programs Division	11	7	63.6	4	36.4	
0351	CITY ATTORNEY	51	47	92.2	4	7.8	
7501	CIVIL DEFENSE	14	12	85.7	2	14.3	
	CIVIL SERVICE DEPARTMENT	52	41	78.8	11	21.2	
6001	Director's Office	2	2	100	0	0	
6002	Recruitment Division	21	19	90.5	2	9.5	
6003	Classification Division	16	11	68.8	5	31.2	

5004	Employee Relations						
5006	Management Services						
9571	Public Service Careers						
9401	CITY DEMONSTRATION AGENCY	61	3	4.9	58	95.1	
9581	Certified Area						
	COOPERATIVE MANPOWER PLNG. SYSTEM	12	2	16.7	10	83.3	
9541	CAMPS						
9471	Youth Opportunity Program						
9711	Summer Youth Program						
	CITY COUNCIL	37	34	91.1	3	8.1	
9011	Councilmen's Offices						
9051	Clerk of Council						
	CRIMINAL JUSTICE COORDINATING COUNCIL	47	37	78.7	10	21.3	
9561	CJCC						
9691	CJCC - continued						
9741	Indigent Defender Program						
9791	Ind. Def. Prog.-Municipal & Traffic Cts						
9781	Target Area Crime Program						

EXHIBIT 1

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6-14-73

Departmental Breakdown - Continued - page 2

CODE	DEPARTMENT	TOTAL	White	%	Black	%	Other
	FINANCE	318	222	69.8	96	302	
4501	Director's Office	9	7	77.8	2	22.2	
4502	Internal Audit	5	4	80	1	20	
4551	Purchasing	25	23	92	2	8	
4601	Accounting	63	50	79.4	13	20.1	
4651	Treasury Administration	4	4	100	0	0	
4652	Tax Collection & Audit	37	28	75.7	9	24.3	
4653	Receipts & Disbursements	8	5	62.5	3	37.5	
4654	Parking Meter Collection	8	3	37.5	5	62.5	
4681	Bureau of Revenue	97	77	79.4	20	20.6	
4751	Employee Retirement	7	6	85.7	1	14.3	
4801	Bureau of Food Stamps	50	12	24	38	76	
0291	Central Duplicating	5	3	60	2	40	
DEDP	EDP	76	51	67.1	25	32.9	
	FIRE	1020	992	97.3	26	2.5	2/
1501	Administration	7	7	100	0	0	

1501	Administration	7	7	100	0	0	
1551	Firefighting	962	938	97.5	22	2.3	2/1
1553	Fire Training	5	4	80	1	20	
1601	Fire Dispatching	21	20	95.2	1	4.8	
1651	Fire Prevention	25	23	92	2	8	
	GENERAL SERVICES	15	10	66.7	5	33.3	
7751	Mailing	7	4	57.1	3	42.9	
7841	Public Information Office	8	6	75	2	25	
	HEALTH	444	197	44.4	245	55.15	2/4
4001	Director's Office	6	2	33.3	4	66.7	
4351	Administration	9	6	66.7	3	33.3	
4371	Communicable Disease Control	9	7	77.8	2	22.2	
4381	Public Health Nursing, Maternal & Child Care	116	50	43.1	65	56	1/1
4401	Dental Health	2	1	50	1	50	
4411	Venereal Disease Control	13	9	69.2	4	30.8	
4421	Public Health Sanitation	45	29	64.4	16	35.1	
4431	Vector Control	11	6	54.5	5	45.5	
4441	TB Control	35	27	77.1	8	22.1	
4451	Health Lab	1	1	100	0	0	
4463	Air Surveillance	16	4	25	12	75	
4351	Vital Records	26	20	76.9	6	23.1	

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Departmental Breakdown - Continued - page 3

6-14-73

CODE	DEPARTMENT	TOTAL	White	%	Black	%	Other/%
	HEALTH - continued						
1472	Parish Prison Medical Clinic	16	3	18.8	13	81.3	
9341	Home Health Services	10	3	30	7	70	
9611	Environmental Health Service	26	1	3.8	25	96.2	
9661	Rodent Control	28	4	14.3	24	85.7	
9701	AFDC Program	23	13	56.5	10	43.5	
9731	Improved TB Control	2	1	50	1	50	
9301	Sickles	1	1	100	0	0	
NR01	Drug Abuse Treatment Program	49	9	18.4	39	79.6	1/2. D.
	LIBRARY	185	118	638	67	362	
L50A	Administration	16	12	75	4	25	
L50B-M	Maintenance & Operation	109	67	61.5	42	38.5	
L50P-Z	Branch Libraries	42	30	71.4	12	28.6	
L501	Bookmobiles	8	5	62.5	3	37.5	
L551	Restricted Funds	10	4	40	6	60	
	MAYOR	46	26	56.5	20	43.5	

	MAYOR	46	26	56.5	20	43.5	
0251	Mayor's Office (incl. Intern'l Rels)	19	13	68.4	6	31.6	
0252	Human Relations Committee	14	5	35.7	9	64.3	
0262	Consumer Affairs	7	4	57.1	3	42.9	
9741	Urban Development & Planning	6	4	66.7	2	33.3	
MC01	MOSQUITO CONTROL	26	21	80.8	5	19.2	
	POLICE (see attached breakdown)	1841	1531	83.2	309	16.7	V.D.
1001	Superintendent	23	19	82.6	4	17.4	
1002	Internal Affairs Div.	8	8	100	0	0	
1003	Community Relations Div.	28	9	32.1	19	67.9	
1004	Inspections Division	3	3	100	0	0	
1005	Research & Planning Div.	6	5	83.3	1	16.7	
1006	Special Invest. Div.	74	64	86.5	10	13.5	
1051	Public Information Div.	4	4	100	0	0	
1052	Fiscal & P.M. Div.	141	95	67.4	45	31.9	V.D.
1053	Educ. & Training Div.	44	36	81.8	8	18.2	
1054	Tech. Services	341	267	78.3	74	21.7	
1055	Personnel Div.	24	17	70.8	7	29.2	
1061	Patrol Division	681	605	88.8	76	11.2	
1062	Spec. Operations Div.	60	60	100	0	0	
1063	Juvenile Div.	42	37	88.1	5	11.9	

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6-14-73

Departmental Breakdown - continued - 4

CODE	DEPARTMENT	TOTAL	White	%	Black	%	Other/
	POLICE - continued						
1064	Traffic Division	235	178	75.7	57	24.3	
1065	Criminal Invest. Div.	127	17.4	77.6	3	2.4	
	PROPERTY MANAGEMENT	805	472	58.6	330	41	3/.4
5001	Director's Office	12	6	50	6	50	
5051	Public Bldgs. Admin.-	21	15	71.4	6	28.6	
5101	Public Bldgs. Custodial Serv.	195	54	26.7	140	71.8	3/1
5151	Public Cemeteries	18	4	22.2	14	77.8	
5251	Public Bldgs. Maintenance	221	162	73.3	59	26.7	
5651	Historical Pharmacy Museum	3	0	0	3	100	
5801	Municipal Auditorium	42	33	78.6	9	21.4	
5701	Real Property Records	15	16	88.9	2	11.1	
5751	City Telephone Expense	10	7	70	3	30	
5801	Municipal Yacht Harbor	17	14	82.4	3	17.6	
5951	Central Maintenance Garage	214	147	68.7	67	31.3	

5951	Central Maintenance Garage	214	147	68.7	67	31.3	
5961	Theatre of Performing Arts	34	16	47.1	18	52.9	
0450	PUBLIC EMPLOYMENT PROGRAM	11	6	54.5	3	27.3	2/18.
	RECREATION	419	152	36.3	266	63.5	1/.2
3501	Administrative Office	19	11	57.9	8	42.1	
3504	Maintenance	53	28	52.8	25	47.2	
3506	Seasonal	36	4	11.1	32	88.9	
3507	Audubon Park Pool	1	1	100	0	0	
3511	Program Division	92	34	37	58	63	
3512	Uptown Division	53	13	24.5	40	75.5	
3513	Downtown Division	65	13	20	51	78.5	1/1
3514	Lakeshore Division	47	22	46.8	25	53.2	
3515	Algiers Division	41	20	48.8	21	51.2	
9421	Audubon Park Pool	12	6	50	6	50	
	SAFETY & PERMITS	270	182	67.4	88	32.6	
2001	Director's Office	13	10	76.9	3	23.1	
2002	Bd. of Bldg. Stds & Appeals	1	1	100	0	0	
2003	Bd. of Exam. of Oper. Engrs.	5	2	40	3	60	
2004	Bd. of Zoning Adjust. & Appeals	1	1	100	0	0	

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Departmental Breakdown - continued - 5

6-14-73

CODE	DEPARTMENT	TOTAL	White	%	Black	%	Other/I
	SAFETY & PERMITS - continued						
2052	Building Inspection	35	33	94.3	2	5.7	
2053	Electrical Inspec. Section	26	26	100	0	0	
2054	Mechanical Inspec. Section	27	23	85.2	4	14.8	
2055	Plan Processing Section	5	5	100	0	0	
2056	Housing Improvement	38	27	71.1	11	28.9	
2057	Central Relocation	24	11	45.8	13	54.2	
2101	Motor Vehicle Inspec.	65	38	58.5	27	41.5	
9631	Code Enforcement	30	5	16.7	25	83.3	
	SANITATION ** See Pg. 6 also	720	412	57.2	308	42.8	
2501	Director's Office	15	15	100	0	0	
2703	7th Street Incinerator	25	21	84	4	16	
2704	Algiers Incinerator	23	22	95.7	1	4.3	
2705	Gentilly Land Fill	17	17	100	0	0	
2706	Algiers Land Fill	8	8	100	0	0	
2707	Incinerator Support	10	7	70	3	30	

2707	Incinerator Support	10	7	70	3	30	
2708	N.O. East Incinerator	23	19	82.6	4	17.4	
2751	Manual Street Cleanup	57	43	75.7	12	21.1	
2752	Mechanical Cleanup	12	12	100	0	0	
2753	Flushing	6	6	100	0	0	
2754	Algiers Street Cleanup	9	9	100	0	0	
2755	Task Force Cleanup	6	6	100	0	0	
2756	Vieux Carre Cleanup	12	12	100	0	0	
2301	Grasscutting	12	9	75	3	25	
	STREETS	542	353	65.2	188	34.6	1.2
3001	Director's Office	9	8	88.9	1	11.1	
3051	Engr. Division - Admin.	9	8	88.9	1	11.1	
3052-3-5-3061	Operations	83	74	89.2	8	9.6	1.1
3101	Maintenance Div. - Admin.	16	15	93.8	1	6.3	
3108 - L	Operations	316	192	53.2	124	46.8	
3251	Traffic Engr. - Admin.	16	16	100	0	0	
3252-3	Operations	46	40	83.3	8	16.7	
3000	UPPER PONTALBO	3	2	66.7	1	33.3	
	UTILITIES	24	18	75	6	25	
6501	Director's Office	3	2	66.7	1	33.3	
6551	Regulatory Division	4	4	100	0	0	
61	Taxicab Bureau	17	12	70.6	5	29.4	

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6-14-73

Departmental Breakdown - continued - 6

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	OTHER/%
	WELFARE	257	61	23.7	196	76.3	
9231-2-3	Administration Offices	46	6	13.04	40	86.96	
9201	Touro Shakespeare	88	16	18.1	72	81.8	
9221	Milne Home	47	16	34	31	66	
9241	Youth Study Center	52	18	34.6	34	65.4	
9551	Juvenile Offenders	10	4	40	6	60	
9721	St. Bernard Area Guidance	2	0	0	2	100	
9751	West Bank Outreach Center	2	0	0	2	100	
9761	Lead Poisoning Unit	10	1	10	9	90	
	UNATTACHED BOARDS & COMMISSIONS						
	PARKWAYS & PARKS	299	152	50.9	146	48.3	1/.8
P03A	Administration	13	11	84.6	2	15.4	
P03C	Green Houses	4	3	75	1	25	
P03D	Nurseries	19	11	57.9	8	42.1	
P03E	Building & Util. Maint.	6	3	50	3	50	

PO3D	Nurseries	19	11	57.9	8	42.1	
PO3E	Building & Util. Maint.	6	3	50	3	[illegible]	
PO3F	Tree Trim & Removal	53	34	64.2	19	35.8	
PO3G	Grass Cutting	104	27	26	77	74	
PO3H	Flower & Shrubbery	62	42	67.7	20	32.3	
PO3J	Algiers	9	4	44.4	5	55.6	
PO3K	Park Devel. & Const.	6	3	50	3	50	
PO3L	Pontchartrain Park	13	0	0	13	100	
PO3M	Brechtel Park	10	8	80	2	20	
7051	CITY PLANNING COMMISSION	42	28	66.7	14	33.3	
9451	FRENCH MARKET CORPORATION	24	8	33.3	16	66.7	
7101	VIEUX CARRE COMMISSION	6	5	83.3	1	16.7	

TOTAL EMPLOYEES 8,459 WHITE 6045 BLACK 2672 OTHER 12

_____ % _____ % _____ %

Totals as of 8/1/72: Total 9420 White 5704 (60.5%) Black 3702 (39.2%)

Other 14 (0.1%)

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DEPARTMENTAL BREAKDOWN OF CITY EMPLOYEES - 8-1-72

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	
	ALCOHOL SAFETY ACTION PROGRAM	38	21	55.2	17	44.8	
9521	ASAP	28	14	50.0	14	50.0	
9671	ASAP - Traffic Probation	10	7	70.0	3	30.0	
4011	AVIATION	58	37	63.8	21	36.2	
	CHIEF ADMINISTRATIVE OFFICE	50	41	82.0	9	18.0	
0351	CAO	2	2	100	0	0	
0352	Planning Division	15	13	86.7	1	6.7	1/6.
0353	Operations Division	20	17	85.0	3	15.0	
0354	Federal Programs Division	13	8	61.5	5	38.5	
0851	CITY ATTORNEY	47	43	91.5	4	8.5	
7501	CIVIL DEFENSE (See Pg. 6) a.c.o CIVIL SERVICE DEPARTMENT **	52	41	78.9	11	21.1	
6001	Director's Office	2	2	100	0	0	
6002	Recruitment Division	27	23	85.2	4	14.8	
6003	Classification Division	15	11	73.3	4	26.7	
6006	mgmt Services						
6004	Employee Relations	4	4	100	0	0	

6006	Mgmt Services					
6004	Employee Relations	4	4	100	0	0
7571	Public Service Careers					
9401	CITY DEMONSTRATION AGENCY ***	85	7	8.2	78	91.8
1659	Certified Area					
	COOPERATIVE MANPOWER PLNG. SYSTEM	113	11	9.7	102	90.3
9541	CAMPS	6	1	16.7	5	83.3
9471	Y.O.P.	11	1	9.1	10	90.9
9711	Summer Youth Program	96	9	9.4	87	90.6
	CITY COUNCIL	37	33	89.2	4	10.8
0011	City Councilmen's Offices	29	27	93.1	2	6.9
0051	Clerk of Council	8	6	75.0	2	25.0
	CRIMINAL JUSTICE COORDINATING COUNCIL	37	28	75.7	9	24.3
9361	CJCC	10	5	50.0	5	50.0
9691	CJCC - continued	3	3	100	0	0
7791	2nd Def/Proj - Minor Traffic					
7641	Indigent Defender's Program	24	20	83.3	4	16.7
7781	Target area Crime Proj					
	FINANCE	345	2[illegible]	7[illegible]	[illegible]	[illegible]
0501	Director's Office	11	8	72.7	3	27.3
0502	Internal Audit	5	5	100	0	0
0551	Purchasing	26	24	92.3	2	7.7
0601	Accounting	64	50	78.1	14	21.9

7571 - Public Service Careers listed on Pg. 6; figures included in Civil Service total.
9681 - Certified Area listed on Pg. 6; figures included in CDA total.

EXHIBIT 2.

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Departmental Breakdown - continued - page 2

8/1/72

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	CITY
	Finance - continued						
1651	Treasury Administration	4	4	100	0	0	
1652	Tax Collection & Audit	46	33	71.7	13	28.3	
1653	Receipts & Disbursement	6	5	83.3	1	16.7	
1654	Parking Meter Collection	8	3	37.5	5	62.5	
1681	Bureau of Revenue	97	79	81.4	18	18.6	
1751	Employee Retirement	6	5	83.3	1	16.7	
1801	Bureau of Food Stamps	39	5	12.8	34	87.2	
9291	Central Duplicating	6	5	83.3	1	16.7	
BEDP	EDP	77	56	72.7	21	27.3	
	FIRE	1030	994	97.1	24	2.3	
1501	Administration	9	8	88.9	1	11.1	
1551	Firefighting	966	942	97.5	22	2.3	7/0
1553	Fire Training	5	4	80.0	1	20.0	
1601	Fire Dispatching	21	19	90.5	2	9.5	
1651	Fire Prevention	29	26	89.7	3	10.3	

1651	Fire Prevention	29	26	89.7	3	10.3	
	GENERAL SERVICES	–	–	–	–	–	–
1751	Mailing	10	8	80.0	2	20.0	
1841	Public Info. Officer						
	HEALTH	494	206	41.7	286	58.1	2/
4001	Director's Office	10	4	40.0	6	60.0	
4351	Administration	7	4	57.1	3	42.9	
4361	Vital Records	27	24	88.9	3	11.1	
4371	Communicable Disease Control	9	8	88.9	1	11.1	
4374	~~Sickles' Dispensary~~	1	1	100	0	0	
4381	Public Health Nursing, Maternal & Child Care	131	54	41.2	76	58.0	1/0
4401	Dental Health	5	1	20.0	4	80.0	
4411	Venereal Disease Control	16	14	87.5	2	12.5	
4421	Public Health Sanitation	57	33	57.9	24	42.1	
4431	Vector Control	12	7	58.3	5	41.7	
4451	Health Lab						
4461	Rodent Control	33	1	3.0	32	97.0	
4841	Home Health Services	9	2	22.2	7	77.8	
4911	Environmental Health Service	30	1	3.3	29	96.7	
4441	T.B. Control	37	28	75.7	9	24.3	
4731	Improved T.B. Control						
4[illegible]	~~Laboratory~~	1	1	100	0	6	

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Departmental Breakdown - continued - page 3

8/1/72

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	
	Health - continued						
~~H463~~	Air Surveillance	31	5	16.1	26	83.9	
~~H472~~	Parish Prison Medical Clinic	17	4	23.5	13	76.5	
HR01	Drug Abuse Treatment Program	60	13	21.7	46	76.7	1/1.7
9701	AFDC Program	1	1	100	0	0	
9801	Sickles ~~Pre~~ Clinic						
	LIBRARY	212	145	[illegible]	[illegible]	[illegible]	
L50A	Administration	16	14	87.5	2	12.5	
L50B-M	Maintenance & Operation	120	85	70.9	35	29.1	
L50P-Z	Branch Libraries	46	33	71.8	13	28.2	
L501	Bookmobiles	6	3	50.0	3	50.0	
L551	Restricted Funds	24	8	33.3	16	66.7	
	MAYOR	54	33	[illegible]	[illegible]	[illegible]	
M0251	Mayor's Office, ~~PR~~ (Intern'l Rels.)	29	21	72.4	8	27.6	
M0252	Human Relations Committee	16	6	37.5	10	62.5	
M0262	Consumer Affairs	7	4	57.1	3	42.9	
9741	Urban Development & Planning	2	2	100	0	0	

9741 ~~9271~~	Urban Development & Planning	2	2	100	0	0	
~~1C01~~	MOSQUITO CONTROL	29	29	100	0	0	
	POLICE	1583	1583	84.0	291	15.9	
1001 ~~100A~~	Superintendent	40	36	90	4	10	
1055 ~~100B~~	Police Surgeon	4	4	100	0	0	
1052 ~~100C~~	Budget Control	6	5	83.3	0	0	1/16.
~~105A-D~~	Operations	180	109	60.6	71	39.4	
1053 ~~105E~~	Police Academy	57	49	86.0	8	14.0	
1052 ~~105F~~	General Services	11	10	90.9	1	9.1	
1052 ~~105G~~	Motor Maintenance	57	33	57.9	24	42.1	
105H-M	Operations	132	105	79.6	27	20.4	
1054 ~~105N~~	Central Lockup	86	61	70.9	25	29.1	
1003 ~~105O~~	Community Relations Division	28	9	32.1	19	67.9	
1054 ~~105P~~	Data Processing	6	6	100	0	0	
1062 ~~105Q~~	Tactical Unit	58	57	98.3	1	1.7	
1005 ~~105R~~	Planning Division	7	7	100	0	0	
1054 ~~105S~~	Band	34	34	100	0	0	
1006 ~~105T~~	Vice Squad	26	24	92.3	2	7.7	
1006 ~~105U~~	Narcotics	26	21	80.8	5	19.2	
1006 ~~105V~~	Intelligence Division	22	19	86.4	3	13.6	

105A – 1055
105B – 1054
105C – 1054

105D – 1061

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partmental Breakdown - continued - page 4

8/1/72

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	OTHE
	Police - continued						
107A-J	Operations	272	226	83.1	46	16.9	
~~1063~~	Juvenile Bureau X	44	39	88.6	5	11.4	
107M	Detective Bureau - General	121	115	95.0	6	5.0	
107N	Bureau of Identification	27	27	100	0	0	
107P	Auto Theft	11	9	81.8	2	18.2	
~~107E~~	~~Emergency Employment Pick up~~						
~~107A~~	~~First District~~	94	89	94.7	5	5.3	
1072	Second District	78	78	100	0	0	
1073	Third District	65	65	100	0	0	
1074	Fourth District	44	42	95.5	2	4.5	
1075	Fifth District	80	75	93.8	5	6.3	
1076	Sixth District	87	84	96.6	3	3.4	
1077	Seventh District	50	49	98.0	1	2.0	
1078	Eighth District	49	47	95.9	2	4.1	
10A	Bureau of Corrections	73	41	56.2	32	43.8	
		8	8	100	0	0	

110A	Bureau of Corrections	73	41	56.2	32	43.8	
115A	Police Bureau of Investigation	8	8	100	0	0	
	PROPERTY MANAGEMENT	902	494	54.7	405	44.9	3/
5001	Director's Office	13	5	38.5	8	61.5	
5051	Public Buildings Administration	21	14	66.7	7	33.3	
5101	Public Buildings Custodial Services	238	60	25.2	175	73.5	3/
5151	Public Cemeteries	40	4	10.0	36	90	
5251	Public Buildings Maintenance	239	171	71.5	68	28.5	
5551	Historical Pharmacy Museum	3	1	33.3	2	66.7	
5701	Municipal Auditorium	57	33	57.9	24	42.1	
5701	Real Property Records	17	15	88.2	2	11.8	
5751	City Telephone Expense	9	6	66.7	3	33.3	
5801	Municipal Yacht Harbor	14	12	85.7	2	14.3	
5901	Central Maintenance Garage	251	173	68.9	78	31.1	
5951	Theatre of Performing Arts	11	6	54.5	5	45.5	
1065	P.E.P.						
1011	P.E.P. 666						
	RECREATION	1345	997	74.1	1014	75.3	2/
3001	Administrative Office	17	9	52.9	8	47.1	
3051	Maintenance	59	23	39.0	36	61.0	
3101	Seasonal	201	96	47.8	105	52.2	
3501	Audubon Park Pool						
3551	Program Division	675	89	13.2	585	86.7	1/0.1

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8/1/72

Departmental Breakdown - continued - page 5

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	OTHER
	Recreation - continued						
3512	Uptown Division	106	24	22.6	82	77.4	
3513	Downtown Division	105	28	26.7	76	72.4	1/1.
3514	Lakeshore Division	75	24	32.0	51	68.0	
3515	Algiers Division	56	24	42.9	32	57.1	
9421	Audubon Park Pool	51	12	23.5	39	76.5	
	SAFETY & PERMITS	344	193	56.1	150	43.6	1 - .
2001	Director's Office	16	14	87.5	2	12.5	
2002	Board of Building Stds & Appeals	1	1	100	0	0	
2003	Bd. of Exam. of Oper. Engineers	5	4	80.0	1	20.0	
2004	Bd. of Zoning Adjust. & Appeals	1	1	100	0	0	
2052	Building Inspection	36	31	86.1	5	13.9	
2053	Electrical Inspection Section	27	27	100	0	0	
2054	Mechanical Inspection Section	28	21	75.0	7	25.0	
2055	Plan Processing Section	7	7	100	0	0	

2055	Plan Processing Section	7	7	100	0	0	
2056	Housing Improvement	41	31	75.6	10	24.4	
2057	Central Relocation						
2101	Motor Vehicle Inspection	78	43	55.1	34	43.6	1/1
~~9521~~	~~Interim Assistance~~	-57	0	0	57	100	
9631	Code Enforcement	28	5	17.8	23	82.1	
~~9101~~	~~General Relocation~~	19	8	42.1	11	57.9	
	SANITATION	760	432	56.9	328	43.1	
2755	Task Force Cleanup						
2501	Director's Office	16	16	100	0	0	
2801	Grass Cutting						
*	Operations	744	416	56.0	328	44.0	
2756	V.C. Cleanup						
	STREETS	557	387	69.6	200	34.0	
3001	Director's Office	10	7	70.0	3	30.0	
3051	Engr. Division - Admin.	9	8	88.9	1	11.1	
3052,3, 5, 3061	Operations	84	77	92.7	7	8.3	
310F	Streets - Dist. #1						
310A	Maintenance Division - Administration	16	15	93.8	1	6.3	
310L	Streets - Citywide						
3108-L	Operations	404	220	54.4	184	45.6	
310D	Streets - Store Section						
3251	Traffic Engineering - Administration	18	18	100	0	0	
310C	Streets						
3052,3	Operations	46	42	91.4	4	8.6	
310B	Streets - Asphalt Plant Section						
7000	UPPER PONTALBO	4	3	75.0	1	25.0	

*Includes Sanitation codes 2601, 2651-56, 2701-08, 2751-56, and 2801

Sanitation (cont)

2754 - Algiers Street Cleanup
2753 - Flushing
2752 - Mechanical Cleanup
2751 - Manual Street Cleanup

2707 - Incinerator Supp
2706 - Algiers Land F
2705 - Gentilly Land F
2704 - Algiers Incin.
2703 - 7th St. Incin.

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Departmental Breakdown - continued - page 6

8/1/72

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	OTHER
	UTILITIES	26	20	76.9	6	23.1	
~~6301~~	Director's Office	4	3	75.0	1	25.0	
~~6351~~	Regulatory Division	4	4	100	0	0	
6601	Taxicab Bureau	18	13	72.2	5	27.8	
	WELFARE	346	69	19.9	276	79.7	1/0.1
9231 ~~213~~	Administration Office	126	10	7.9	116	92.1	
~~9241~~	~~Children's~~						
9221	Milne Home	56	17	30.4	39	69.6	
~~9251~~	~~Shelter~~						
9201	Touro Shakespeare	90	19	21.1	71	78.9	
9241	Youth Study Center	61	18	29.5	42	68.9	1/1.6
~~9551~~	Juvenile Offenders	11	5	45.5	6	54.5	
9701 - Lead Poisoning							
9721	St. Bernard Area Guidance						
9751	West Bank Outreach Center	2	0	0	2	100	
~~7501~~	~~CIVIL DEFENSE~~						
~~9561~~	~~Docker~~	14	12	85.7	2	14.3	
~~9571~~	~~Public Service Careers~~ Comm Service	4	1	25.0	3	75.0	
~~9681~~	~~Certified Area~~						
~~9721~~	~~St Bernard Area Guidance Cente~~	6	0	0	6	100	
	UNATTACHED BOARDS AND COMMISSIONS						

UNATTACHED BOARDS AND COMMISSIONS							
	PARKWAYS & PARKS	3.0	165	42.3	200	54.8	
P03K	Development + Const						
P03A	Administration	17	10	58.8	7	41.2	
P03M	Brectal Park						
P03J	Athens						
P03C-M	Operations						
P03L	Pontchatrain Park	348	155	445	193	55.5	
7051	CITY PLANNING COMMISSION	43	32	74.4	11	25.6	
9451	FRENCH MARKET CORPORATION	34	11	32.4	23	67.6	
7101	VIEUX CARRE COMMISSION	7	6	85.7	1	14.3	
7301	~~RAILROAD TERMINAL BOARD~~		1	100	0	0	
7351	~~AUDUBON PARK COMMISSION~~	not available				-	

TOTAL EMPLOYEES 1413 WHITE 5'134 BLACK 370 OTHER 14

60.55% 37.29% 0.13 %

Parkways + Parks (Cont)

P03H - Flower + Shrubbery
P03G - Grass Cutting
P03R - Tree Trim + Removal
P03B - Building + Utility Maintenance
P03D - Nurseries
P03C - Green Houses

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JUDICIAL & PAROCHIAL 8/1/72 Pg. 7

CODE	DEPARTMENT	TOTAL	WHITE	%	BLACK	%	OTH
	JUDICIAL & PAROCHIAL						
8151	District Attorney	53	43	81.1	10	18.9	
8201	Coroner	37	28	75.7	9	24.3	
8301	Juvenile Court	123	99	80.5	24	19.5	
8351	Municipal Court CJCC	48	48	100	0	0	
8361	Traffic Court	121	97	80.2	24	19.8	
~~8391~~	~~Indigent Defender Prog. - Municipal~~						
8401	4th Circuit Court of Appeals	2	1	50.0	1	50.0	
8421	1st City Court Criers	3	3	100	0	0	
8440	Civil District Court Judges	10	10	100	0	0	
8441	Civil District Court	10	10	100	0	0	
8501	Criminal District Court	40	36	90.0	4	10.0	
8541	Criminal Sheriff - Parish Prison	136	83	61.0	53	39.0	
8551	Criminal Sheriff	92	81	88.0	11	12.0	
8552	Criminal Sheriff	3	1	33.3	2	66.7	

8552	Criminal Sheriff	3	1	33.3	2	66.7
8601	Criminal Dist. Ct.-Clerk's Off.	57	54	94.7	3	5.3
9774	Magistrate Sect - Crim Ct					
8850	Pensions, Retired Judges *	11	11	100	0	0
8520	Deceased Judges Widows					
J500	Magistrate Court.	25	23	92.0	2	8.0
J510	These are First and Second	4	4	100	0	0
J520	City Courts' Administrative	2	2	100	0	0
J530	Codes -- not city funds.	30	30	100	0	0
J540		15	15	100	0	0
J550		5	5	100	0	0
J560		24	21	87.5	3	12.5
J570		49	47	95.9	2	4.1
J580		43	42	97.7	1	2.3

TOTALS 10,303 CITY EMPLOYEES 6,193 WHITE 3,091 BLACK

62.7 % 31.1 %

17 OTHER

0.2 %

BEST COPY AVAILABLE

I. Findings and Recommendations Relative to Black Employment in the Police Department

A. *General Statistics*

(1) The percentage of black employment in the police department has increased steadily in the past five years. In May, 1967, blacks represented only 7% (103 out of 1,418 employees) of the total employment of that department. As of 7-31-72, black employment had increased to about 16% of the total (304 out of 1,894 employees). These figures do not include police patrolmen who are scheduled for appointment in summer of 1972, many of whom, hopefully, will be black.

(2) Although the increase of black employment in the police department has been steady since 1967 and is significant in terms of the past, the rate of increase has been less than that of the city's total work force. What is significant also is the fact that most of the increase of black employment in the police department has been in the non-uniformed (i.e., non-commissioned) service. Black employment in the uniformed service has only increased about 1.3% in the last five years. In May, 1967, black employment in the uniformed service was about 3.1% (45 out of 1,174 employees); as of December, 1971, it was 4.4% (81 out of 1,384 employees).

B. *Recruitment*

(1) At present the recruitment (or communication) techniques of both the civil service and police departments are limited to the following:

(a) *Civil Service*—The department publishes an examination announcement which is placed on a bulletin board on the 1st floor of City Hall and which is mailed to every department of city government, to anyone upon request, and to about 150 organizations and individuals in the community who have contact with the public and with job-seekers. The department also advertises the announcement in both the *Times-*

Picayune and the *Louisiana Weekly* in the classified sections and sometimes in articles in the body of the paper. The department does not do any motivational advertising such as display ads, TV spots, etc.

(b) *Police Department*—The police department currently has only one recruiter, attached to the Community Relations Division. His efforts are limited to the visitation of high schools on Career Days and the recruitment of high school students for the cadet program. On Career Days the recruiter generally gives a short talk on the benefits of police service and distributes some motivational literature, written and published in large part by the FBI (which does not enjoy a favorable image in the black community). Aside from these efforts the department does little else in terms of recruitment. It has been demonstrated that minimal efforts at recruitment directed to the predominantly black community via radio only result in a significant increase in the number of black applicants.

(2) Although the recruitment techniques of both the police and civil service departments could be improved, these techniques do not appear to be a major factor in the slow rate of increase of black employment in the uniformed service. From the standpoint of the number of black applications for employment at the patrolman level, these techniques appear to be adequate enough. The number of black applicants for the position of patrolman has increased steadily and significantly since Sept., 1969. At that time, the number of black applications represented approximately 28% of the total applications for the position. Since that time four announcements for the position have been made. In response to each of these announcements the number of black applications increase. At the time of the announcement in November, 1971, black applications represented 45% of the total. The most recent exam announcement, released in June, 1972, resulted in black applications representing 60% of the total submitted.

MEMORANDUM

TO: WILLIAM R. KONRAD, DIRECTOR OF PERSONNEL

FROM: JOHN D. JACKMAN, CHIEF, CLASSIFICATION DIVISION

SUBJECT: THE SEQUENCE OF BLACK/WHITE EMPLOYMENT RATIO IN THE CLASSIFIED SERVICE SINCE MAY 15, 1967

Date of Tabulation	Total Classified Work Force	Annual (Calendar Yr.) % Increase Total Work Force	No. of Blacks In Work Force	In Work Force % of Blacks	Annual (Calendar Yr.) % Increase Black Employees
5/15/67	7,572		1,215	16.0%	
12/31/67	7,859	6.5%	1,271	16.2%	
3/31/68	7,934		1,305	16.5%	
12/31/68	7,935	.97%	1,404	17.7%	18.32%
6/30/69	8,592		1,718	20.0%	
12/31/69	8,219	3.58%	1,601	19.4%	14.03%
6/30/70	8,949		2,030	22.61%	
12/31/70	8,606	4.71%	1,833	21.30%	14.49%
6/30/71	9,116		2,272	24.92%	
12/31/71	9,088	5.60%	2,372	26.10%	29.41%
7/31/72	11,067*		4,115	37.2%	
1/30/73	9,564	5.2%	3,107	32.5%	31%
7/12/73	10,926		4,258	39.0%	

* Excludes approximately 500 Youth Opportunity Program summer employees.

NOTE: Systematically higher annual summer tabulation figures embrace the seasonal recreational and student employment.

CIVIL SERVICE DEPARTMENT

SUBJECT: Additional Data on Black/White Employment in City of New Orleans, Louisiana

UNCLASSIFIED SERVICE:

Total Work Force	Black Male Employees	Black Female Employees	Total Black Employment	% of Blacks In Work Force
745	90	47	137	18.4%

CLASSIFIED SERVICE:

Total Work Force	Black Male Employees	Black Female Employees	Total Black Employment	% of Blacks In Work Force
10,928	2,825	1,433	4,258	39.0%

Excerpts from Verbatim Transcript of Special Council Meeting on Redistricting

Held on February 15, 1972 at 7:00 P.M.

COUNCILMAN JOSEPH W. DI ROSA: Ladies and gentlemen, we are meeting here tonight for a formal hearing. This is not one where we have an invocation and all the rest of the formalities that come up. This is just an open public hearing on redistricting, as such. We want you to know that this is an open hearing only. There will be no voting on anything at this time, and it has been the rule of the Council that we ask that you restrict your speech, if you can, to three minutes, but we allow you five. If it's possible to restrict it to three, we ask that you do so, but we allow five minutes to each speaker. If you have any written statements, we ask that you submit the written statements to us and we'll have them reproduced and give them back to you—give any portion of it back. If you have a statement that will take longer than that to read, we ask that you summarize your statement and give us a copy of the written statement.

MR. ALVIN SARGENT: Gentlemen of the Council. I am representing the Black Political Coalition of New Orleans. I am also Vice Chairman of the SCLC of the local chapter here in New Orleans. I think it was January 20 when our President, Reverend Avery Alexander, did present to this body a plan for SCLC. From this plan represented ideas of a coalition of black leaders from around the City. At that meeting, the first meeting, seoend meetings that we had, it was agreed upon that we would then approach the City Council for the Council to act on a ten-member district and also one member to run at large on a City-wide basis, which would mean that this one member that would be elected, from the City-wide basis, would then through revision of the City Home Rule Charter, become the Vice Mayor of New Orleans and also the President of the City Council. This is the plan that we are endorsing. The Black Political Coalition of New Orleans and also the SCLC.

We are asking and we are submitting to you without all this various technical data that most of you have at hand, we are saying that this is the best plan that we think would be beneficial to New Orleans and its people, because, in our minds and on our plans as what we have come up with, we feel that it would then be truly representative of all the people on the City Council taking in all the ethnic groups of the City. So therefore, we are urging the Council if they would like very much to get with us, we would like to get with you and show you just exactly what we are talking about. We are asking for true representation on the City Council for a ten-member district and one Councilman at Large would then represent the Vice Mayor. This would have to be done, of course, through revision of the Home Rule Charter.

MRS. ORETHA HALEY: Okay. My name is Oretha Haley, and I'm speaking on behalf of the Coalition for Fair Redistricting Plan. I do have copies of the plan I'd like to pass out to you gentlemen at this point.

Gentlemen, we are speaking to you on behalf of several political and civic groups. For the record, the group are the Urban League, Southern Organization for Unified Leadership (SOUL), American Federation of Teachers, Community Organization for Urban Politics, Orleans Educators Association, the Orleans Parish Progressive Voters League, Black Youth for Progress, Black Organization for Leadership Dtvelodpment (BOLD), the Treme Improvement Association, Community Conscience Blacks, Broadmoor Improvement Association, Representatives Dorothy Taylor, Louis Charbonnet, Theodore Marchand, George Connor, and Johnny Jackson.

We submit to you that the City Council as presently structured, five district Councilmen and two at large is inadequate, for the structure does not lend itself to representation of all people. Thus, a redistricting plan on the present basis is unfair.

According to the Municipal Year Book, an authoritative resume of activities and statistical data on American cities, New Orleans has the smallest Council for cities with population upward of 500,000. There is one exception. Columbus, Ohio, has seven Councilmen. However, all seven are elected at large. A survey of cities of 500,000 indicates that the size of City Councils range from nine to fifteen, with the median being twelve. For example, Buffalo-15, Memphis-13, and San Francisco-11, just to mention a few.

When one looks at national trends, the needs of New Orleans, and acceptable criteria for redistricting, it is concluded that an eleven district council would best serve the population of New Orleans. This would mean that Ward Fifteen, Algiers, would be a district by itself. We are submitting this eleven district plan to you after a thorough evaluation of several five districts, two at large plans, as well as several seven districts plans.

Hence, the Coalition for a Fair Redistricting Plan is speaking against the passage of Ordinance Calendar Number 5193, calling an election for approval or rejection by electors of an amendment to the Home Rule Charter to increase the number of District Councilmen from five to seven. Further, we are opposed to Ordinance Calendar Number 5194, redistricting the City of New Orleans.

This eleven-man plan provides for population equality, acknowledgment of the only real, natural boundary New Orleans has, the River, contiguous and compact districts. Also it calls for proportionate representation of all socio-economic segments of the community.

The eleven district plan provides for an ideal population per district of 53,931, with a high population deviation of +3.2 per cent, well below the five per cent deviation that has been generally accepted by the Courts.

Just a final note on cost, I'd like to mention. It would appear on the surface that an eleven district council would be too costly for the City. The fact of the matter is, that we would reduce the cost to the people. While total dollars would increase, the benefits per dollar increase would be significantly higher than the dollar outlay. Citizens would get quality representation with eleven districts that would more than justify the added cost.

Gentlemen, we are fully cognizant of the Charter mandate that the Council must redistrict itself by April. We further understand that in order to meet that mandate, the Council will have to redistrict according to its present five-two structure. However, this is the public hearing concerning redistricting. We feel it is our responsibility to say to you at this time, that that mandate will be inadequate.

Finally, let me comment on the question that some of you may have regarding gerrymandering. Gerrymandering is defined as to divide an area into political units to give special advantages to one group.

The present five-two councilmanic structure is so gerrymandered as to give disproportionate representation to white, middle to upper income groups in the Community.

Thus, we urge you to adopt an ordinance that would enlarge the Council to eleven districts, which would give a fair opportunity/advantage to all segments of the population. You have before you a copy of the plan that we are introducing for your consideration at this time with the population deviations . . .

Councilman Joseph V. Di Rosa: I didn't want to disturb you while you were reading because we had a copy of you text here, but I was going to tell you that you had two minutes. I'll give you a minute to wind up.

Mrs. Oretha Haley: I have finished at this point, except for answering any questions, if you may have any.

Mr. Nils R. Douglas: Sure will. My name is Nils R. Douglas. I'm the Chairman of the Southern Organization for Unified Leadership. As I attempted to record for my own benefit some of the thoughts that I would attempt to suggest and share with you today, it became obvious to me that to appear at a public hearing as a black person representing a portion of the black community, that it was a kind of ridiculous notion, that it's ridiculous from the standpoint that all black people share the same goals with reference to the question that's before us and all white

people, particularly members of the City Council of any City or any political group, ought to know, if they don't know, what aspirations of the black people in the United States are. If, perchance, there is anyone present who doesn't know why we are here, we are here to change the color of the members who are presently sitting as Councilmen and Councilmen at Large.

It may be paradoxical for me to stand here and to suggest to you that you are to vote for something that may result in your not being here the next time a vote is taken. But, I'm sure that for all of us who are aware of what the Constitutional process in America is all about, we would choose to do it by ballot, rather than do it by bullet. And this is not a threat. This is merely dealing with the subject from what I consider to be a realistic point of view. One of the genuises of the American Constitutional system, and indeed the legislative system of America, is the fact that it's a flexible document, it's a flexible institution. It can expand and it can contract.

I'm saying to you that the present posture of the Constitution of the City Council of the City of New Orleans is not adequate to deal with the needs. It's totally inadequate and unsatisfying to deal with the wants of the black people of the community of the City of New Orleans. I'm saying to you that there must be a drastic change in the Constitution, the racial constitution, of the Council of the City of New Orleans. This is a public hearing and a public hearing is the time for words. However, there will be a time when words will no longer be appropriate and we will have to use other methods, abbeit methods within the framework of the governmental institutions of the City and the State, whereby we can make known through other means our dissatisfaction.

Let me close by saying that the people that I claim to represent wholeheartedly endorse the eleven-man plan, the plan which I call the Haley-Rochon plan, for the redistricting of the Council of the City of New Orleans. Any questions you have, refer to Mrs. Haley and Mr. Rochon, the authors of the plan. Thank you.

MR. REVIUS ORTIQUE: I'm Revius Ortique. I represent the Citizens Participation Committee of the Urban League, and I fashioned my representation along those lines, because . . .

COUNCILMAN JOSEPH V. DI ROSA: Excuse me just a minute. Did you give your name and affiliation into the microphone? I don't believe you did, did you?

MR. REVIUS ORTIQUE: The Urban League of New Orleans, of course, cannot lobby any particular bill. However, the Urban League is very interested in the citizens becoming fully aware of their responsibility to their City government and the City government's responsibility to them.

I'm sure each of the Councilmen recognize that the City of New Orleans is rapidly becoming a City with a strong black potential. I'm sure each of the Councilmen recognize that this Council, as well as all governments in this country, favor people working within the system to bring about systematic change. The change has to be reflective of the people who constitute that governmental body. I need not remind you that the latest official census reports indicate that 46.3% of the population of the City of New Orleans is black. It is not surprising, therefore, that black people have aspirations to sit on the City Council and sit in a meaningful manner. It is the position of the Community Participation Committee that certain criteria ought to be developed in order to determine what type of Council the City of New Orleans should have. This criteria reflects itself in a conviction that the City of New Orleans needs and must have an increase in the number of Councilmen.

As Mrs. Haley has indicated, New Orleans is out of step with other cities of similar size. Most cities of our size have Councilmen in much larger numbers.

Secondly, it is imperative that the City of New Orleans have a Council that truly represents the people. It we are 46.3% of the population, then we feel that we ought to have something in terms of numbers of Councilmen who would properly reflect that type of representation.

We would, therefore, urge the Council to consider seriously the eleven-man council that has been proposed here tonight. We think that this type of council will truly represent the people, will give proper representation to districts, like the Algiers district, and at the same time, will let the people of the City of New Orleans know that this Council, this Council is willing to support a plan that will truly represent them.

Let me say in my last two minutes, Mr. President, that I think, personally, that this Council will want to do its work. It seems to me that it is not an appropriate tack to insist that courts do the work for us. It's not an appropriate tack that we commit people to resort to systems changes outside of what we think of as orderly constitutional government. It will be my hope that you gentlemen, with insight and foresight for the City of New Orleans, would recognize that it is inevitable that the constitutnecy of the City of New Orleans will demand that they have a larger Council and a more representative Council, and that this Council will want to do its work within the system and not have someone else tell you that you did an improper thing that you must now comply with an edict from some other body. It's your place as a citizen.

As a representative of the Urban League Citizens Participation Committe, I urge you to do that which is best for New Orleans and we say that which is best is the eleven-man council, affording greater opportunity for all of the people of the City of New Orleans. Thank you.

MRS. DOROTHY TAYLOR: Mrs. Dorothy Taylor, State Representative, District 93. Like Mr. Smith, who mentioned the problem he had, I'd like to say that every black person in the City of New Orleans has a problem. And that problem is lack of representation—lack of representation right here in our City Council Chambers, where we constitute 46.3 of the total population, but yet, not one black on our City Council. I wholeheartedly support the plan submitted by the Coalition for a Fair Redistricting, and I urge you, as the elected Councilmen, who are supposed

to be representing black folks throughout the City of New Orleans, to give it a second thought, and to review this plan very carefully. And we will be watching you as to how you cast your vote for this particular eleven-member plan.

Mr. Robert Collins: My name is Robert Collins. I'm the President of the Community Organization for Urban Politics. I speak on behalf of the eleven-member plan as proposed by the Coalition for a Fair Redistricting. We feel that certainly New Orleans is out of step with the times in terms of the type of representation we have on the City Council. Even—not even going out of the State of Louisiana—even with reference to other cities—other towns and cities in our State have done, we're out of step with the times. Crowley, Louisiana has black representatives on its City Council; Baton Rouge, Louisiana has black representatives on its City Council. But, yet, we with 46 per cent plus blacks still do not have a black person sitting to make laws for our City. Now, it's been said, and I think it's becoming more and more of a truism in terms of politics for blacks. We view the political structure from the new and evolving viewpoint. We have no permanent enemies. We have no permanent friends. We have only permanent interests. And we are permanently concerned about fair and equal representation in terms of government and we intend to settle for nothing less. Now, the failure of this Council to fairly redistrict, and as far as I'm concerned, fair redistricting requires not less than an eleven-member plan, particularly in view of what Algiers wants, what blacks want, what Uptown wants, and Downtown, et cetera. I think you—there's been a lot of studies made, and I think that only if eleven—only an eleven-member plan can satisfy all of competing interests, not only blacks, and not only whites, but also of all the various socio-economic, ethnic, et cetera, groups that have to be satisfied in this community. I think that when you take all this into consideration, a fair and equitable plan is an eleven-member plan. And I'd like to urge and beg

this Council to seriously consider this plan, because there's a final note that's been touched upon before—as a lawyer, I always like to think about this—failure of this Council to fairly redistrict will obviously and inevitably result in legal action being taken. There's no question about that in my mind. Thank you, gentlemen.

Mr. Louis Charbonnet: I'm Representative-elect Louis Charbonnet from District 96. I'm speaking on behalf of the people that I represent in District 96 and the black community. I say Representative-elect because this is the proper title, but I'd like to say at this time, just to refresh Councilman Ciaccio's memory in some cases, the only reason why I'm standing up here as a Representative-elect is because of reapportionment that allowed black people to be properly represented, and this is what we are asking the Council to do here when they deliberate on councilmanic reapportionment. We are asking you to give black people of this community and minority groups, a chance to represent themselves and to govern themselves.

Now, you said some things about a certain district about, you know, how much money—50 this and 50 that—I say in District C that we have never been represented, the same as we've never been represented in District 96, as far as the City Council goes. And we want a new representative and we want a representative that will represent the entire people, all of the people of any district that the Council sets up.

I'm here to say that I'm favor of the eleven-man district submitted by the Coalition. My understanding is that certain areas of the city will be grouped together in the locales that best fit them. We feel that Algiers will be a unit and we also feel that the lines run, I think Mrs. Haley will explain them, that they do not cross any precinct lines and they do follow some of the general lines of the redistricting of the legislature.

I urge the Council to consider these plans. Look at them very carefully and you will find that they stay within the guidelines set up by the federal Government. And we

ask the Council not to go into the turmoil that the State went into to be forced to redistrict itself. Do your job. Redistrict the Council that it will represent all of the eleven-man plan and you'll be considering the plan that's voted on by the people. Thank you.

MR. BOB MC FARLAND: Thank you, Councilman DiRosa. My name is Bob McFarland. I'm a member of the Black Louisiana Action Committee, District two which is the second congressional district and I'm here to represent my views . . .

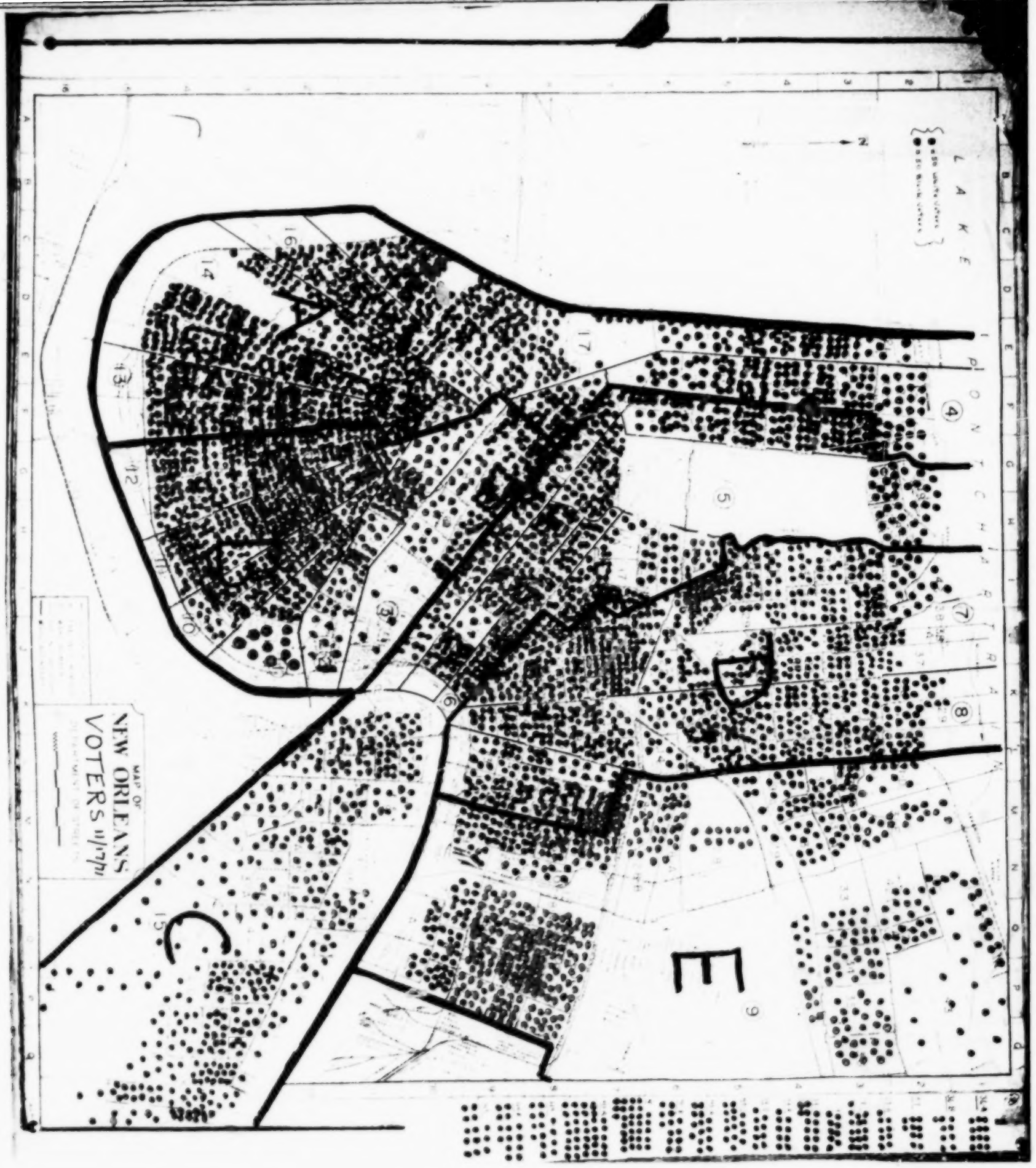
COUNCILMAN JOSEPH V. DI ROSA: Just give your address, Bob. Will you please. Your address.

MR. BOB MCFARLAND: My address is 7930 Cohn Street. I'm here to represent my views on the whole issue of reapportionment. Number one, this City is somewhere in the neighborhood of fifty percent black. I think that it's ridiculous for you gentlemen on the Council or any of us who are really supposed to be true about having real representation in government to talk about maintaining a Council that is still all white. I know that Councilman Moreau said that one of his objections to increasing the Council so that it would have black majority districts is that he didn't want to polarize the Council, but I submit to you that the Council is already polarized because there is seven gentlemen up there and all of you are white and this city is almost fifty percent black. So the Council is already polarized.

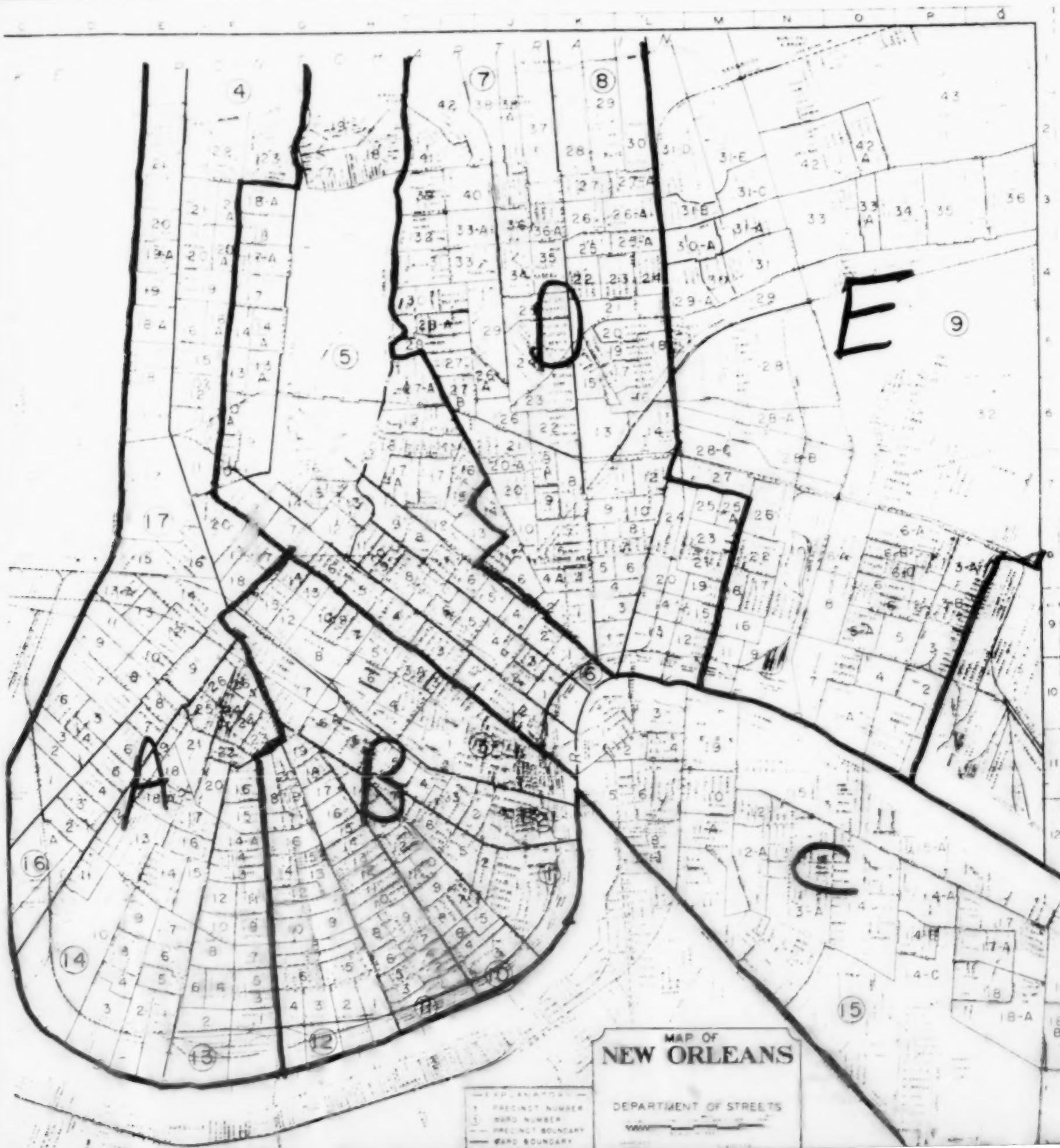
Number two, we got a seven-member Council right now, five districts which in the present situation, there's no possibility of a black person being elected. I think that's ridiculous. I think that any councilman, present councilman, who is really about the business of really having representative government should also agree that that is ridiculous.

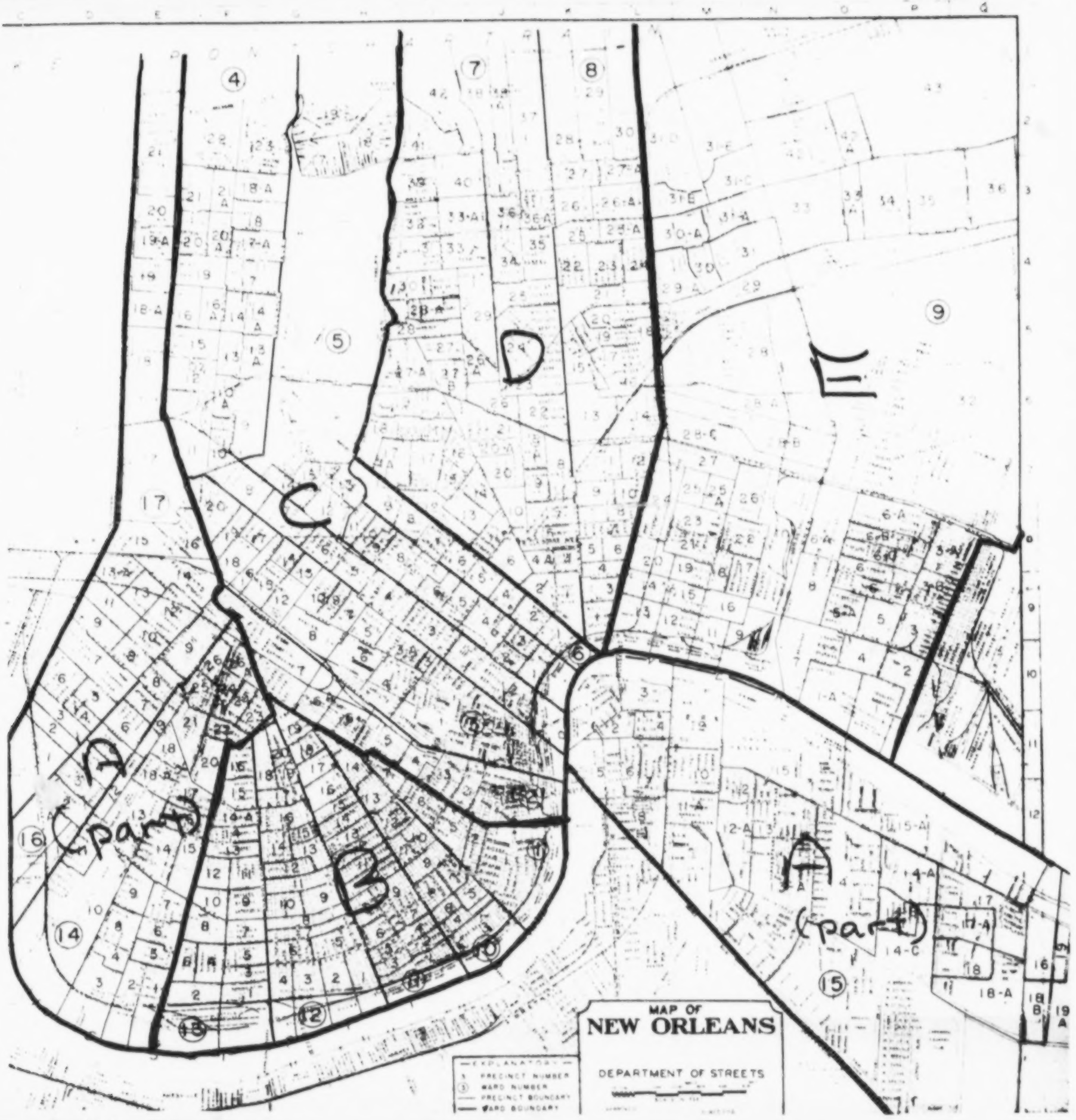
I know that I've heard some plans about including the Jefferson Council and including the St. Bernard Council and all kinds of other Councils. Everything but including

black people, you know, into power. My position here is, I'm in support of the eleven-member Council as represented by the SCLC. I think that early in the game the SCLC came together, invited members of the black community and everybody who was interested in participating, to come up with a plan that would be acceptable to the masses of black people in this City. I think that they have a plan, a plan that represents that situation and (copy here is illegible) . . . . . gentlemen on the Council would give strong consideration to that plans, because it represents a means by which black people can really be represented in this government, if this is really what we are about the business of. Thank you.



Composite Illustration of Defendant's Exhibits 1 and 5

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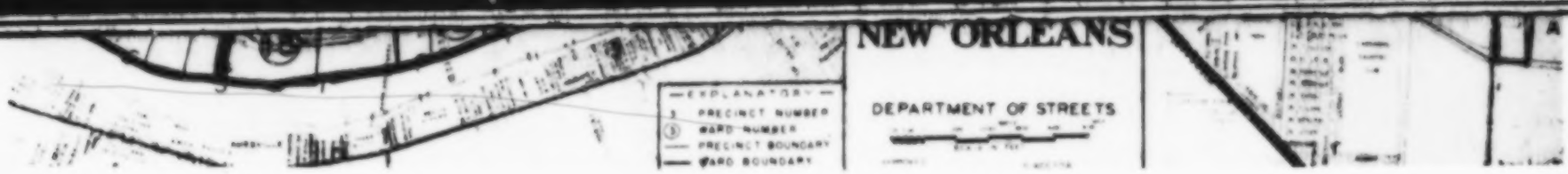


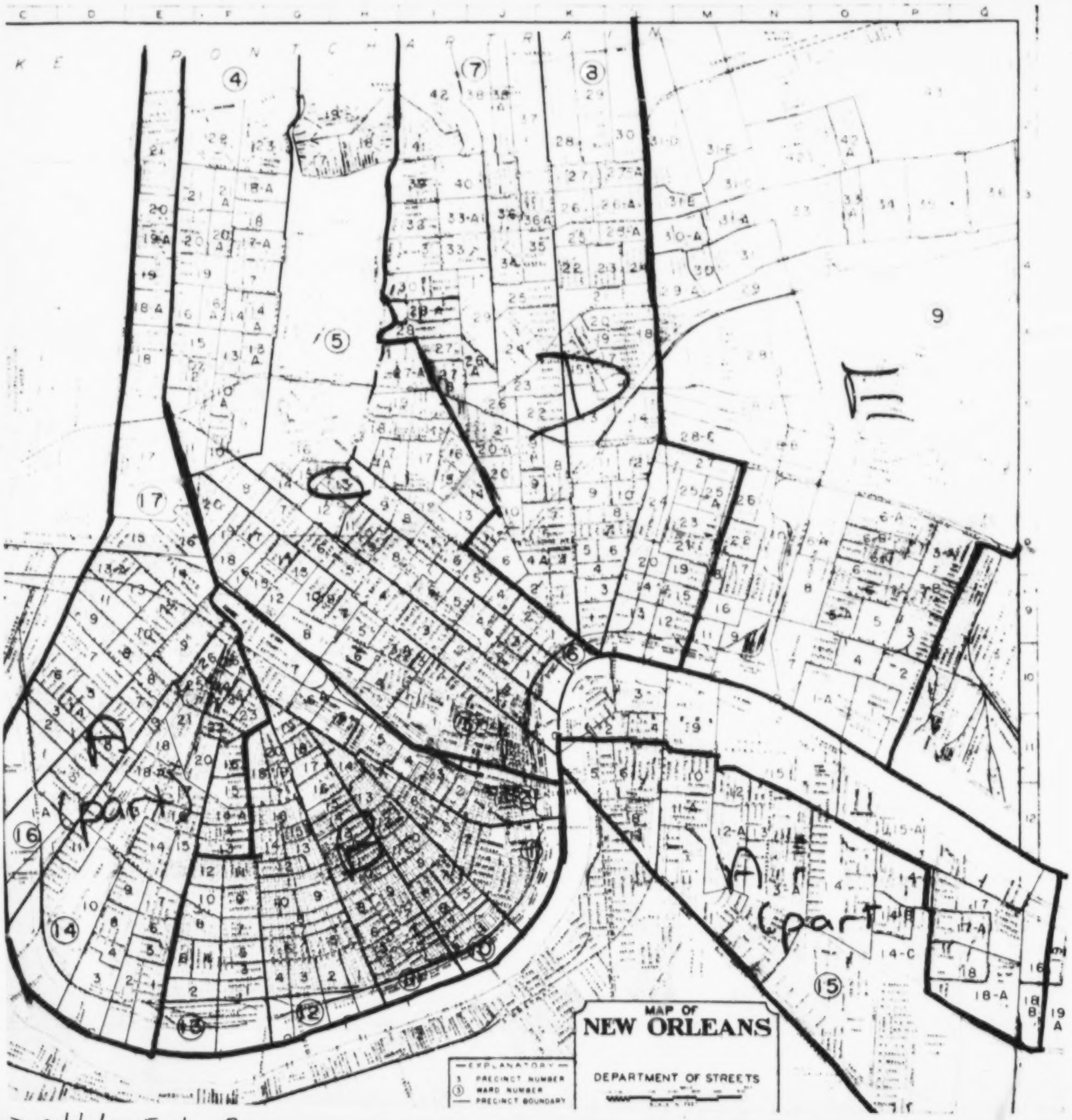
Dfdt's Exh. 2

1961 REDISTRICTING PLAN*

District	Population Total	Deviation	Black	%Black
A	134,613	+13.4%	42,521	31.6
B	108,769	-8.4%	67,600	62.2
C	100,811	-15.1%	40,544	40.2
D	114,367	-3.6%	50,029	43.7
E	134,911	+13.7%	66,604	49.4
Total	593,471		267,298	45.0

District	Registered voters Total	Black	%Black
A	61,048	13,830	22.7
B	39,266	19,723	50.2
C	41,844	10,304	24.6
D	48,546	17,615	36.3
E	51,694	22,111	42.8
Total	242,398	83,583	34.5

*Statistics calculated by the City of New Orleans, letter of May 9, 1973.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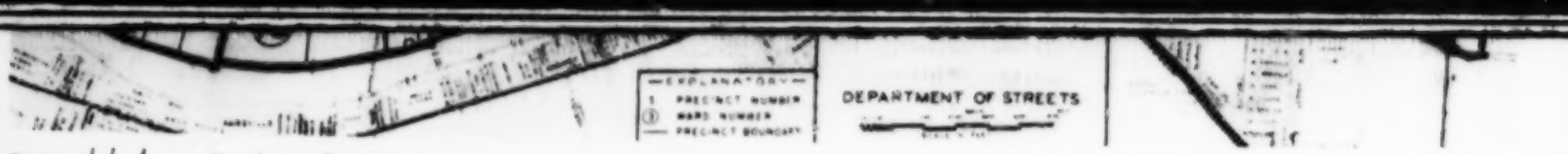


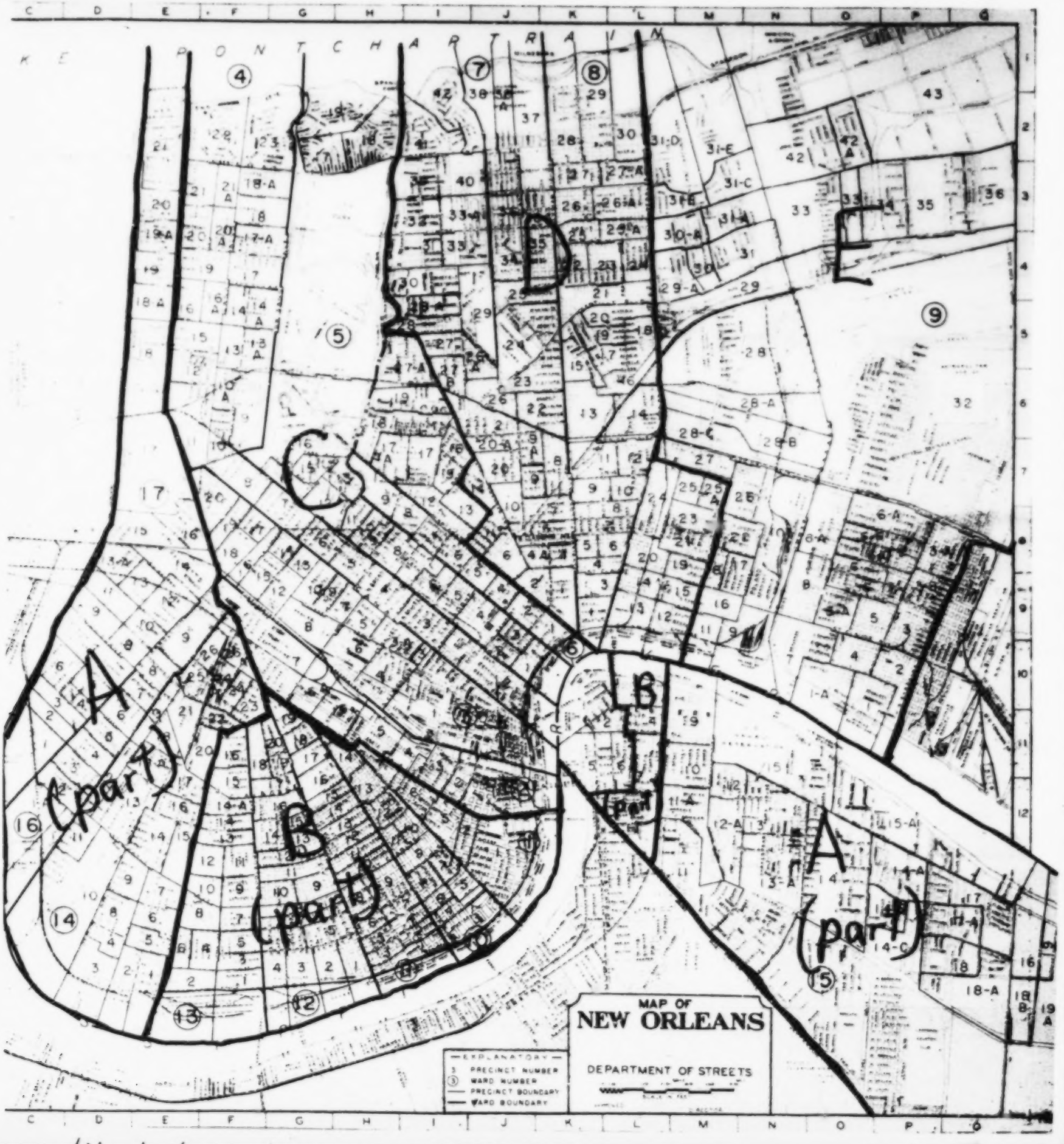
Dfdt.'s Exh. 3

MOREAU'S ORIGINAL REDISTRICTING PLAN
PROPOSED JANUARY 13, 1972 */

District	Population Total	Deviation	Black	%Black
A	120,034	+1.1	43,512	36.2
B	117,937	-0.6	77,965	66.1
C	119,332	+0.5	35,242	29.5
D	119,820	+0.9	53,185	44.4
E	116,351	-2.0	57,397	49.3
Total	593.474		267.301	45.0

District	Registered voters Total	Black	%Black
A	53,421	13,443	24.1
B	42,513	22,443	52.8
C	53,965	9,641	10.8
D	50,643	17,592	30.4
E	44,239	17,845	40.0
Total	244,781	80,964	33.1

* Population calculated by the Department of Justice from precinct statistics prepared by the Bureau of Governmental Research in New Orleans. Registration calculated from April, 1972 statistics from the city.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WARD BOUNDARY
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B
C
D
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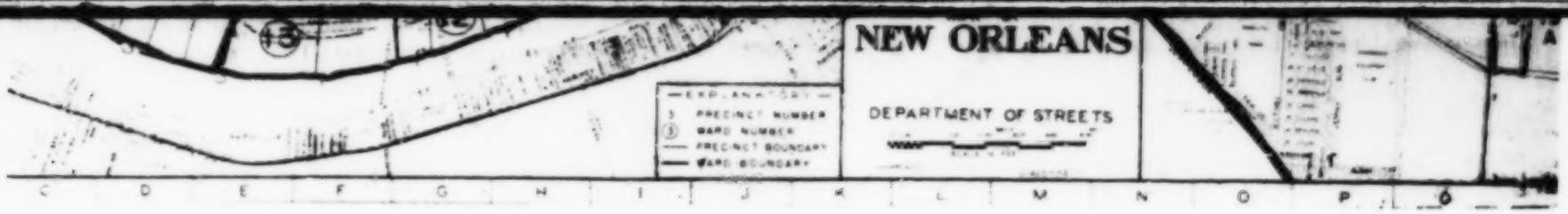


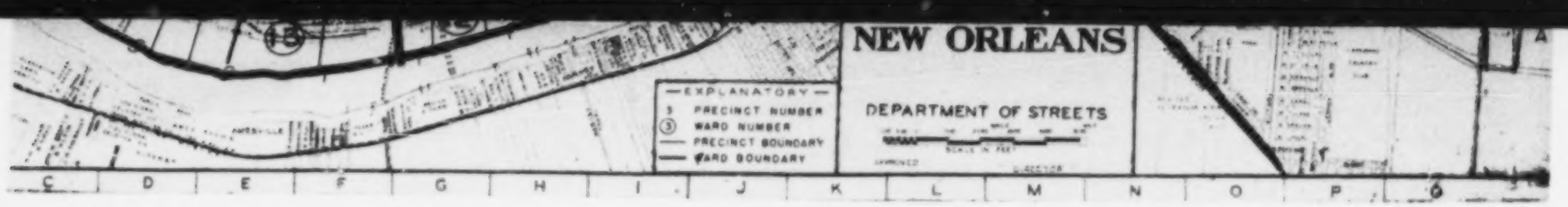
Dfdt's Exh. 4

1972 REDISTRICTING PLAN *
ORDINANCE 4796 M.C.S.

District	Population---------- Total	Deviation	Black	%Black
A	120,751	+1.7%	37,954	31.4
B	116,645	-1.7%	68,547	58.8
C	118,243	-0.4%	48,958	41.4
D	118,300	-0.3%	51,409	43.5
E	119,532	+0.7%	60,438	50.6
Total	593,471		267,306	45.0

District	Registered voters---------- Total	Black	%Black
A	53,859	11,558	21.5
B	44,257	20,012	45.2
C	49,908	12,683	25.4
D	49,964	16,826	33.7
E	44,216	18,134	41.0
Total	242,204	79,213	32.7

* Statistics calculated by the City of New Orleans, letter of May 4, 1972.



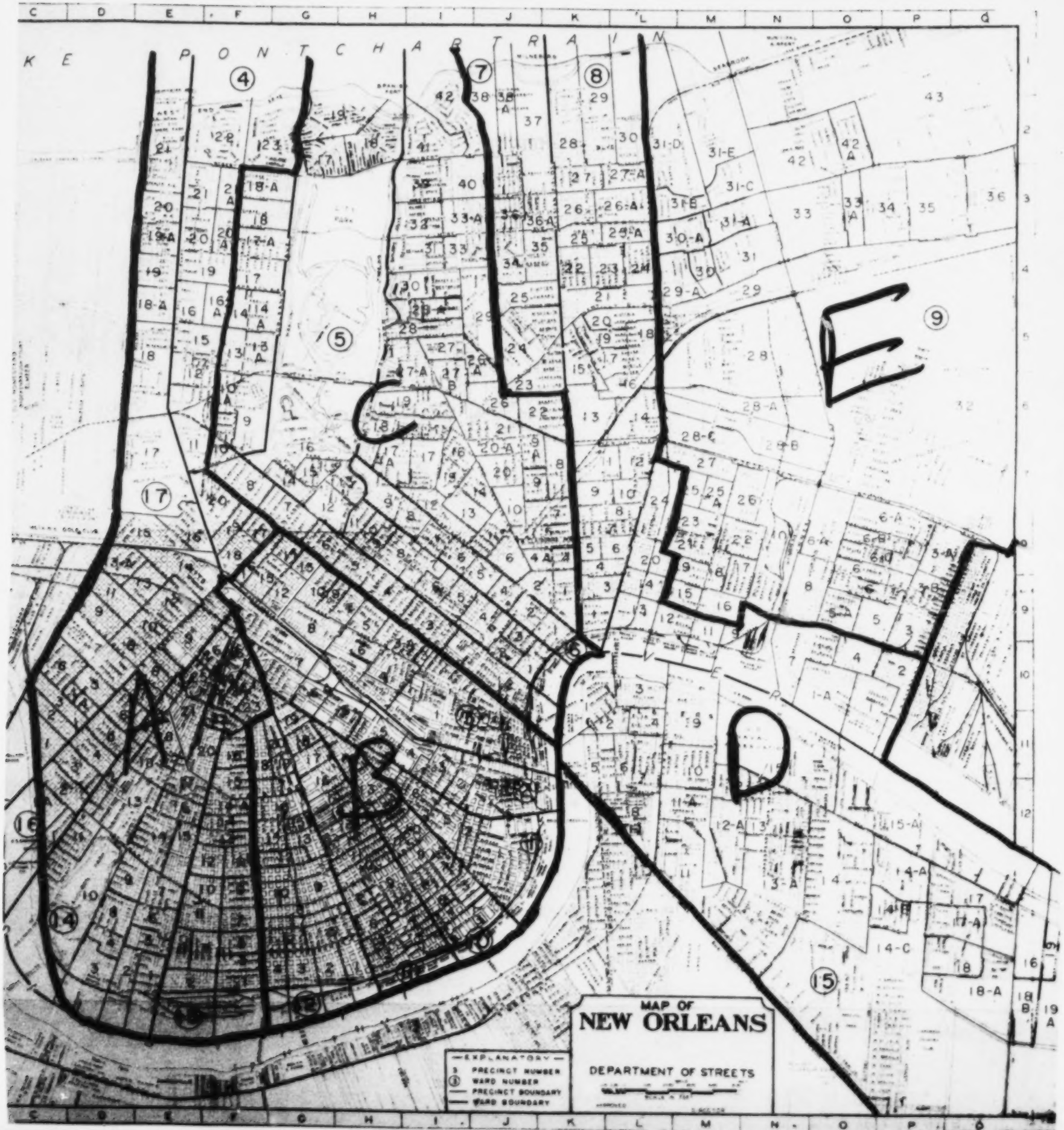
Dfdt's Exh. 5

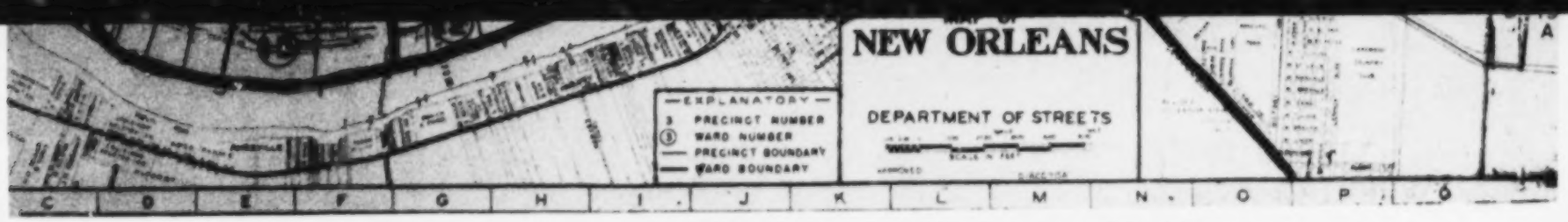
1973 REDISTRICTING PLAN */
ORDINANCE 5154 M.C.S.

District	Population Total	Deviation	Black	%Black
A	117,901	-0.7%	36,665	29.1
B	118,678	0.0%	76,109	64.1
C	119,023	+0.3%	42,651	35.8
D	118,337	-0.3%	51,447	43.5
E	119,532	+0.7%	60,437	50.6
Total	593,471		267,308	45.0

District	Registered voters Total	Black	%Black
A	57,387	12,964	22.6
B	39,870	20,976	52.6
C	49,756	11,606	23.3
D	49,505	18,223	36.8
E	45,898	19,819	43.2
Total	242,416	83,588	34.5

*Statistics calculated by the City of New Orleans, letter of May 9, 1973.


C D E F G H I J K L M N O P Q
KE PONTCHARTRAIN
4
5
7
8
9
16
17
14
15
A
B
C
D
E
MAP OF
NEW ORLEANS
DEPARTMENT OF STREETS
EXPLANATORY
PRECINCT NUMBER
WARD NUMBER
PRECINCT BOUNDARY
WARD BOUNDARY



Dfdt's Exh. 6

REDISTRICTING PLAN PROPOSED BY
NEW ORLEANS CHAPTER, NAACP */

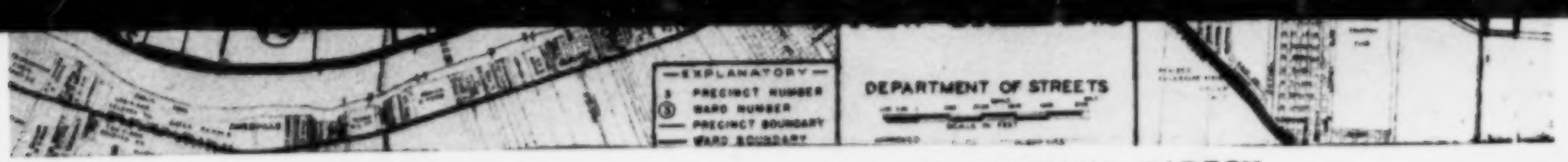
	Population			
District	Total	Deviation	Black	%Black
A	117,901	-0.7%	36,665	29.1
B	118,678	0.5%	76,109	64.1
C	119,676	+0.8%	62,756	52.4
D	118,120	-0.5%	28,022	23.7
E	119,096	+0.3%	63,756	53.5
Total	593,471		267,308	45.0

	Registered voters		
District	Total	Black	%Black
A	57,387	12,964	22.6
B	39,870	20,976	52.6
C	48,204	19,210	39.9
D	50,667	9,171	18.1
E	46,270	21,267	46.0
Total	242,398	83,588	34.5

625

* Statistics calculated by the City of New Orleans, letter of May 31, 1973, from Councilman Sapir.

MAP OF
NEW ORLEANS
DEPARTMENT OF STREETS
EXPLANATORY
PRECINCT NUMBER
WARD NUMBER
PRECINCT BOUNDARY
WARD BOUNDARY
PONTCHARTRAIN
CITY PARK
A
B
C
D



Defendant's Exhibit 7

REDISTRICTING PLAN PROPOSED BY ORLEANS PARISH REPUBLICAN POLITICAL ACTION COUNCIL */

District	Population Total	Deviation	Black	%Black
A	119,531	+0.7%	42,397	35.5
B	117,638	-0.9%	88,504	75.2
C	117,894	-0.7%	26,865	22.8
D	117,016	-1.4%	78,207	66.8
E	121,330	+2.2%	31,379	25.9
Total	593,409		267,352	45.0

District	Registered voters Total	Black	%Black
A	53,401	13,880	26.0
B	39,024	24,734	60.8
C	53,392	7,307	13.7
D	38,467	24,373	63.4
E	58,109	13,189	22.7
Total	242,393	83,483	34.4

* Population statistics calculated by the Department of Justice from precinct population figures supplied by the New Orleans Bureau of Governmental Research. Registration statistics supplied by the Republican Political Action Council.

Supreme Court, U. S.
FILED
JUL 16 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1869

PETER H. BEER, ET AL.,
Appellants

versus

UNITED STATES OF AMERICA, ET AL.,

and

JOHNNY JACKSON, JR., ET AL.,
Appellees

Appeal from the United States District Court
for the Eastern District of Louisiana

MOTION TO DISMISS OR AFFIRM

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Attorneys for Intervenors-Appellees

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-1869

PETER H. BEER, ET AL., Appellants

v.

UNITED STATES OF AMERICA, ET AL.,

and

JOHNNY JACKSON, JR., ET AL, Appellees

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16, Paragraph 1(a), 1(c) and 1(d) of the Rules of this Court, Johnny Jackson, Jr., et al, Intervenors-Appellees, move that the appeal be dismissed, or, alternatively, that the judgment of the District Court be affirmed.

QUESTION PRESENTED

Whether the District Court clearly erred in finding that Plaintiffs-Appellants failed to meet their burden of proving that their redistricting did not have the purpose and will not have the effect of abridging or denying the vote of black citizens of New Orleans in accordance with Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c.

STATEMENT OF THE CASE

The Council of the City of New Orleans on March 2, 1972, adopted a redistricting ordinance (Plan I), and submitted the plan to the Attorney General of the United States for the required scrutiny under Section 5 of the Voting Rights Act of 1965, supra. The Attorney General found that Plan I was racially discriminatory in purpose or effect, because it artificially and unnecessarily divided areas of black concentration without a rational basis, resulting in a larger number of white voters than black voters in each of the districts.

The City Council then adopted Ordinance No. 5154 Mayor Council Series (referred to as Plan II or the "Moreau" plan), which was only slightly different than Plan I, and submitted it to the Attorney General pursuant to Section 5. The Attorney General again interposed an objection, finding that Plan II exhibited the same type of racially discriminatory gerrymandering as did Plan I.

Six of the seven individual Councilmen of the City of New Orleans, purporting to act for the City of New Orleans, then filed suit for a declaratory judgment in the District Court for the District of Columbia, pursuant to the alternative approval provisions of Section 5. After an extensive hearing, depositions, and massive documentary evidence, the three-judge District Court unanimously held that Plan II will have the effect of abridging, on account of race or color, the right to vote in Councilmanic elections in the City of New Orleans, and denied the declaratory judgment sought by Plaintiffs.

The District Court in its lengthy Opinion (appended to Appellants' Jurisdictional Statement) determined that there were a number of independent grounds upon which the plan failed to pass Section 5 muster. Among other things, the District Court found that the delineation of the districts artificially divided areas of significant black concentration by oblong vertical districts constructed without a rational basis. Additionally, the District Court, applying the Whitcomb v. Chavis, 403 U.S. 124 (1971) and White v. Regester, 412 U.S. 755 (1973) "totality of circumstances" standard, found that the plan operates "invidiously to cancel out or minimize the voting strength" of New Orleans' black minority, and effectively cuts off their access to the political process at every level. The District Court found the political context in which Plan II was to operate, to be saturated with the debilitating vestiges of a recent history of severe official racial discrimination at every level, including the right of blacks to register and vote and participate in the democratic processes. The Court also found the political context to contain a one-party system, effectively closed to blacks; unresponsiveness of the all-white City Council to the particularized interests of the black community; the majority or run-off requirement in party primary elections, which has a propensity for submerging racial minorities; and anti-single shot voting law, which forecloses concentration of the minority vote on a single aspirant in primary elections; and at-large elections for two members of the seven-member Council, which with proven bloc voting in New Orleans, assures that

there will be a white quota of at least two members on the City Council, and that blacks are limited to vying for the five district seats, from which they are also excluded under Plan II.

In short, the District Court did not even find that this was a close case, but concluded that the abridgement of the vote on account of race under Plan II was drastic and severe.

The District Court properly found that it was not its prerogative to devise as a remedy a fair plan of redistricting, but only to deny or to grant the declaratory judgment. Assuming this limitation on Section 5 jurisdiction, your Intervenors-Appellees, Johnny Jackson, Jr., et al, immediately following the Attorney General's objection to Plan II, filed suit in the United States District Court for the Eastern District of Louisiana against the individual members of the City Council, and seeking that that Court within its equitable authority devise a racially fair plan of redistricting for the New Orleans City Council. (Johnny Jackson, Jr., et al v. Council of the City of New Orleans, et al, C.A. No. 73-1862 "D", U.S.D.C., E.D. La.). That Court on August 31, 1973, enjoined Councilmanic elections under the pre-existing malapportioned districting plan provided for in the City Charter, without opposition from the City Council. During this time, of course, Plan II could not be implemented because of the outstanding objection by the Attorney General. The District Court in the Eastern District of Louisiana had first appointed a Special Master and directed him to devise a racially fair plan

of redistricting for the City Council. However, after the instant case was set for trial, the District Court in the Eastern District of Louisiana in August of 1973 held its proceedings in abeyance pending the outcome of the instant matter in the United States District Court for the District of Columbia. On March 19, 1974, your Intervenors-Appellees as plaintiffs in No. 73-1862 "D" in the Eastern District of Louisiana, moved for reactivation and expedited proceedings, requesting that the Court direct the Special Master to devise a fair plan of redistricting under which elections for Councilmen could be conducted. On June 21, 1974, the District Court for the Eastern District of Louisiana denied plaintiffs' motion, and contined to hold its proceedings in abeyance pending a final determination by this Court. The result has been that although elections were scheduled on November 10, 1973 to elect Councilmen for the City of New Orleans, who were to take office on April 1, 1974, no Councilmanic elections have been conducted, and the present all-white City Council are retaining their offices at least until the disposition of this appeal.

ARGUMENT

This Court is asked to review and give plenary consideration to a garden variety racial gerrymander, which a unanimous three-judge District Court found to be drastically violative of Section 5 of the Voting Rights Act of 1965 on a number of independent grounds. Since this is a case that clearly should be affirmed under prior decisions of this Court, and particu-

larly in view of the action taken by the United States District Court for the Eastern District of Louisiana in Johnny Jackson, Jr., et al v. Council of the City of New Orleans, et al, supra, awaiting the decision of this Court before proceeding to order the much-overdue Councilmanic elections under a non-racially discriminatory single-member district plan of apportionment, Appellees Johnny Jackson, Jr., et al respectfully urge this Court to summarily affirm the District Court pursuant to Rule 16, Paragraph (c) and (d).

In City of Petersburg v. United States, 354 F.Supp. 1021 (D.D.C., 1972), aff'd. 410 U.S. 962 (1973), the only case similar to that at bar to reach this Court after a determination by the District Court for the District of Columbia pursuant to Section 5, this Court summarily affirmed the District Court's holding that the plaintiffs had failed to carry their burden of showing that annexation of a large white area, while retaining at-large elections for City Councilmen, does not have the purpose or effect of denying or abridging the right to vote on account of race or color, pursuant to Section 5. In the case at bar, the evidence that Plan II was in fact racially discriminatory was even more overwhelming than in City of Petersburg. The plaintiff City of Petersburg was able to urge with some force that any racially discriminatory effect was merely incidental to the City's prime goal of enlarging its boundaries, with attendant enlargement of its tax base. The City of New Orleans similarly argues that the racially discriminatory effect of its delineation of district lines is only incidental to the

accomplishment of other governmental aims. However, the evidence demonstrated and the District Court found that the alleged other governmental aims of the City of New Orleans were inconsistent, ambiguous and shifting. Specifically in regard to the City's assertion that the narrow, oblong, vertical districts were drawn to honor ward lines, the District Court found that "the ward boundaries are political anachronisms insofar as councilmanic elections are concerned, and survive merely as convenient administrative designations for groups of precincts", and that their "original function" had been "rendered obsolete". (See n.219, p. 49a-50a, Jurisdictional Statement). The District Court also found that the purported governmental aim of following ward lines had not been honored in practice by the City Council, either in the development of Plan I or Plan II. (See p. 49a, Jurisdictional Statement). The District Court further found that although the Council staff purported to follow certain governmental aims in developing the plan, Plan II "may have been as much the handiwork of councilmen as of the staff, with resultant uncertainty as to the extent that allegiance to the staff's guidelines was maintained. The evidence also discloses wide differences of opinion among the councilmen as to the relative priority and weight which the factors incorporated into the guidelines should be assigned." (P. 50a, Jurisdictional Statement). See also, Taylor v. McKeithen, 407 U.S. 191 (1972), which raised the issue of the significance, or lack thereof, of New Orleans' wards to redistricting. Certainly then, the contention of the City that the racially discriminatory effect of the plan was only

accomplishment of other governmental aims is of significantly less force than that in the City of Petersburg, supra, and accordingly, the judgment of the District Court should be affirmed summarily herein as it was in the City of Petersburg, supra.

In interpreting the Fourteenth and Fifteenth Amendments to the United States Constitution, this Court has held that racially discriminatory gerrymandering is constitutionally prohibited, Gomillion v. Lightfoot, 364 U.S. 339 (1960); Wright v. Rockefeller, 376 U.S. 52 (1964); Fortson v. Dorsey, 379 U.S. 433 (1965), and has set forth guidelines for determining the presence of constitutionally prohibited racial gerrymandering. Whitcomb v. Chavis, 403 U.S. 124 (1971) and White v. Regester, 412 U.S. 755 (1973). The District Court, applying the standards culminating in White v. Regester, supra, found that "under the totality of the circumstances", Plan II operated to minimize and cancel out the voting strength of the minority and effectively cut off their access to the political process. Under these cases, the principal problem of minorities overcoming discriminatory districting arrangements, whether it be of the ad hoc variety (delineation of district boundaries) as in Wright, supra, or the institutional variety (at-large elections, multi-member districts, and the like), as in Fortson, supra, Whitcomb, supra, and White, supra, has been in meeting the burden of proof. The facts of the case at bar, as demonstrated by the evidence and found by the District Court, would be sufficient under this line of decisions to meet the burden of proof if this were a case in which the black minority was

challenging Plan II on direct Fourteenth and Fifteenth Amendment grounds. However, since this case arises under Section 5 of the Voting Rights Act of 1965, the burden of proof is upon the Councilmen of the City of New Orleans to demonstrate that the plan does not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. Georgia v. United States, 411 U.S. 526, 538 (1973) and South Carolina v. Katzenbach, 383 U.S. 301, 335 (1966). Thus, under the totality of circumstances in this case, where the burden of proof is upon the Councilmen of the City of New Orleans, it is even more clear than in White, supra, that Plan II impermissibly operates to minimize and cancel out the voting strength of the minority, and denies to them access to the political process at every level. Accordingly it is manifest that the questions on which the determination of the cause depend are so unsubstantial as to not need further argument, and the Court should grant the motion to affirm. The District Court pretermitted the question of racially discriminatory purpose, having found that Plan II was clearly racially discriminatory in effect. However, it should be noted that the evidence presented below is sufficient to demonstrate that Plan II has the purpose of abridging on account of race or color the right to vote in Councilmanic elections in the City of New Orleans, and even more clearly it demonstrates that the Councilmen of the City of New Orleans fail to meet their burden of demonstrating that the plan had no such purpose. Racially discriminatory purposes are, of course, elusive. The day is gone where white public officials would openly admit on the

stand that their intent was to disenfranchise or discriminate against the black minority. Racially discriminatory purposes must now be gleaned from the circumstances of a particular case. See, e.g., Alexander v. Louisiana, 405 U.S. 625 (1972), (exclusion of blacks from juries); Carter v. Jury Comm'n., 396 U.S. 320 (1970); Spencer v. Cugler, 326 F.Supp. 1235 (D.N.J., 1971), aff'd 454 F.2d 839 (9th Cir., 1970), 404 U.S. 1027 (1971) (school desegregation); Hobson v. Hansen, 269 F.Supp. 410 (D.D.C., 1967). Appellees submit that the circumstances of this case, including the blatant and drastic racially discriminatory result of Plan II, the total absence of an alternative rational purpose, and the history of the City Council in adopting a prior racially discriminatory plan, are more than sufficient to warrant the legal inference that Plan II was racially discriminatory in purpose as well as in effect.

CONCLUSION

Accordingly, Appellees Johnny Jackson, Jr., et al, pray that this Court expeditiously affirm the judgment of the District Court below on grounds that it is manifest that the contentions raised by Appellants are so unsubstantial as to not need further argument, and in order that the District Court for the Eastern District of Louisiana in Johnny Jackson, Jr., et al v. Council of the City of New Orleans, et al, supra, may proceed to develop a racially fair single-member district plan of apportionment which conforms to the one man, one vote mandate, and conduct elections thereunder at the earliest practicable

date, so that the citizens of New Orleans be not further denied their right to vote for Councilmen, which has been postponed since November 10, 1973.

Respectfully submitted,

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CERTIFICATE

I, Stanley A. Halpin, Jr., Attorney for Appellees Johnny Jackson, Jr., et al and a member of the bar of the United States Supreme Court, do hereby certify that copies of the foregoing Motion to Dismiss or Affirm were mailed, first class postage prepaid, this _____ day of July, 1974, to the following counsel of record:

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHNNY JACKSON, JR., ET AL	NO. 73-1862
VERSUS	CIVIL ACTION
THE COUNCIL OF THE CITY OF NEW ORLEANS, ET AL	SECTION D

MEMORANDUM OPINION AND ORDER

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Eddie L. Sapir, Esq.

Pro Se

BOYLE, District Judge:

On the plaintiffs' unopposed motion, the Court, on August 14, 1973, entered its order in this reapportionment action staying proceedings herein pending the outcome of the case of Beer, et al v. United States of America, et al, Civil Action No.

1495-73 of the docket of the United States District Court for the District of Columbia, in which case plaintiffs here are intervenors.

The Beer case was decided adversely to the City of New Orleans by the District of Columbia Court on March 15, 1974. An appeal from that decision is pending in the Supreme Court of the United States.[1/]

1/ No. 73-1869, October Term, 1973.

On June 5, 1974 we held a hearing on the motion of the plaintiffs herein "to reactivate this case" and took the matter under advisement after allowing defendants herein five days to reply to the memorandum of counsel for movers, which was not served until shortly before the hearing. On June 6, 1974 counsel for defendants advised the Court they elected not to file any further memoranda. Having considered the record, memoranda and oral arguments of counsel and the law, we have determined that the motion should be, and the same is hereby, DENIED.

The motion under consideration, if granted, would require this Court to again set in motion procedures, which it had previously initiated before the aforesaid stay was sought and

granted, looking toward confection of a constitutional judicial plan of reapportionment of the New Orleans City Council.

The plaintiffs urge that this case should proceed in order that the election machinery may be geared and put in motion for the holding of an election under a judicial plan of redistricting in order to obviate further delay in citizens exercising their franchise privileges in selection of councilmen. Since August 14, 1973 this Court and this litigation have not proceeded in that direction because the plaintiffs, who have sued individually and on behalf of all registered voters, as a class, asked that the case not proceed.

The motion under consideration, and the opposition thereto, poses the question of whether we should, at this time and under all of the circumstances now existing, proceed to develop and decree a plan of redistricting and then order an election thereunder. The answer to that question has required consideration of many factors and, after having given the matter careful consideration, we concluded the answer should be in the negative.

The so-called "Moreau Plan", found by the Attorney General

of the United States and the District of Columbia Court not to pass muster under Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973(c)), is a legislatively adopted plan of reapportionment. Before that Plan could be implemented, Section 5 required submission of it to the Attorney General of the United States for review or for review by a Three Judge Federal District Court for the District of Columbia. But review by the three judge court prior to implementation of the Plan would have been unnecessary if the Attorney General, upon his consideration of the Plan, had not interposed any objection to the Plan. However, such an objection was lodged. Hence, review and approval by the District of Columbia Court was necessary before the Plan could be made effective for the calling and holding of councilmanic elections.

Section 5 provides for appeal from the judgment of the District of Columbia Court to the Supreme Court of the United States.

The Congress, while recognizing the importance of the right to constitutional representation of all citizens, also recognized that procedures must be provided by which proponents

and opponents of covered apportionment plans may have due process. Due process,and appeal is a part thereof, involves delay, but we believe it was the intent of Congress that legislative reapportionment efforts which can gain the required approval should be given priority.

The Supreme Court has recognized that the legislative body of a governmental unit has the duty and task to reapportion according to federal constitutional standards. Its jurisdiction in such matters is primary and courts should not preempt the legislative task. See White v. Weiser, _____ U.S. _____, 93 S.Ct. 2348, 2354-55 (1973).

The appeal now pending in the Supreme Court of the United States appears to involve, among others, the issue of whether election of councilmen-at-large satisfies constitutional requirements. A final decision on that issue would have great bearing on the type of redistricting plan which this Court may be called upon to develop and order into effect.

Unquestionably, the right of the citizenry to elect councilmen should not be unnecessarily delayed and it cannot be disputed that federal courts have the power to devise plans

of reapportionment and order elections held thereunder at appropriate times and in appropriate cases.

However, until the City of New Orleans has had its day in the Supreme Court, we should not proceed here. Should the Supreme Court reverse the trial court, it appears this litigation may be mooted and elections could proceed without the possible delays which might be encountered because of appeals from and review of any judgment we may render. Even were we to proceed to develop and decree a judicial plan, likely appeals by non-prevailing parties could again enforce delays in holding elections.

Plaintiffs' motion to stay proceedings herein states, as a basis therefor, the following:

> ". . . such action by this Court holding its proceedings in abeyance would be appropriate in order to avoid possible conflicts between this Court and the United States District Court for the District of Columbia, and to avoid the possibility of double elections for members of the city council at considerable added expense to the people of New Orleans."

The possibility of conflict still exists, as does the

possibility of double elections at considerable added expense 2/

2/ We were told on hearing of the motion that the election cost to the City of New Orleans would approximate $100,000.00. Candidates' campaign expenses would undoubtedly be substantial.

---

to the people of New Orleans, if we were to proceed at this time.

/s/ Edw. J. Boyle, Sr.
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana

June 21, 1974

Supreme Court, U. S.
FILED
SEP 16 1974
MICHAEL RODAK, JR., CLERK

No. 73-1869

In the Supreme Court of the United States

OCTOBER TERM, 1974

PETER H. BEER, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1869

PETER H. BEER, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States moves that the judgment of the district court be affirmed.

OPINION BELOW

The opinion of the district court (J.S. App. 1a-72a) is reported at 374 F. Supp. 363.

JURISDICTION

The judgment of the district court (J.S. App. 73a-74a) was entered on March 15, 1974. A notice of appeal (J.S. App. 75a-76a) was filed on April 5, 1974, and the jurisdictional statement was filed on June 13, 1974. The jurisdiction of this Court is invoked under 42 U.S.C. 1973c.

QUESTION PRESENTED

Whether the district court properly determined that appellants had failed to establish that the redistricting

of the City of New Orleans, Louisiana, for councilmanic elections will not have the effect of abridging the right to vote on account of race or color.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, in pertinent part provides:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 1973b(a) [of this title] * * * are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color * * *.

STATEMENT

The facts are set forth at length in the opinion of the district court (J.S. App. 3a-22a). We briefly summarize them here.

As of 1970, the population of the City of New Orleans was 593,471 persons, of whom 267,308 were black; registered voters in the City numbered 242,416, of whom 83,588 were black. White citizens thus comprised 55 percent of the population and 65.5 percent of the voters; black citizens made up the remaining 45 percent of the population and 34.5 percent of the electorate (J.S. App. 3a).

There are few racially intermixed residential areas in the city. The black population is heavily concentrated in a series of neighborhoods extending eastwardly and westwardly through the central part of the city; the areas lying north and south of this belt, with minor exceptions, are overwhelmingly white (J.S. App. 4a).

The City Council of New Orleans is composed of seven members, of whom five are chosen from single-member districts and the remaining two from the city at large. Primary elections for the Council are by majority vote, and singleshot voting is prohibited (*ibid.*).

The City Charter of New Orleans requires the Council, after each national decennial census, to reapportion the five districts so that each is of equal population. Acting pursuant to that requirement, the Council, on March 2, 1972, enacted a new reapportionment scheme, Ordinance No. 4796 M.C.S. (Plan I). The City Attorney submitted Plan I to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. Plan I created five councilmanic districts, each running from north to south across the city; the effect of this redistricting was to divide the black population among the five districts in such a manner that each district contained more white than black voters. The Attorney General interposed an objection to that plan (J.S. App. 7a-8a, n. 26):

> * * * Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts. Moreover, it does not appear that the district lines

> are drawn as they are because of any compelling governmental need and they do not reflect numeric population configurations or considerations of district compactness or regularity of shape. * * *

The Council subsequently passed a second reapportionment plan, Ordinance No. 5154 M.C.S. (Plan II). Plan II differed from Plan I in only a single essential respect: the predominantly white community of Algiers—an area isolated from the rest of the city by the Mississippi River—was made a single district, and the other four districts ran from north to south as in Plan I. The effect of this change was, however, to give black voters a slight majority (52 percent) in one district. The City Attorney submitted Plan II to the Attorney General, who objected to that plan also (J.S. App. 9a-10a, n. 33):

> Our evaluation of Ordinance numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical [*i.e.*, north-south] shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east to west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and the south of the city resulting in districts with more white than black voters.

Six members of the Council then filed this action in the United States District Court for the District of Columbia, requesting a declaratory judgment under Section 5 of the Voting Rights Act that Plan II neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. The district court denied the requested declaratory relief.

The court found that Plan II would have the effect of abridging the vote of the black citizenry of New Orleans. The court based that determination principally upon the observation that the proposed redistricting, considered together with the at-large election of two councilmen, the requirement of a majority vote for primary nomination and the prohibition against singleshot voting in the at-large election, virtually guaranteed that white voters would control at least six of the seven council seats. The court did not consider this fact to be conclusive of illegality under the Voting Rights Act, but it stated that the City had the burden of coming forward with substantial reasons to justify its selection of a redistricting plan that diluted black voting strength in councilmanic elections. The court reviewed the City's claims and concluded that the City had failed to carry that burden.

ARGUMENT

1. Appellants contend (J.S. 8-11) that the district court erroneously applied a test of "compelling state interest" (J.S. 9) to their proffered justifications for selecting a redistricting plan that politically fragmented the black population of New Orleans. But the court, in rejecting appellants' justifications, did not rely on one precise test. The court reasoned that since feasible redistricting alternatives existed that would not have a comparable discriminatory effect, and appellants had offered no substantial justification for "dilution of the vote * * * on the scale indicated here" (J.S. App. 53a), Plan II did not satisfy the requirements of the Voting Rights Act. That conclusion was correct. State and local governments bear the burden of proving substantial justification for the choice of a plan with a racially discriminatory effect. Cf. *Griggs* v. *Duke Power Co.*, 401 U.S. 424; *Loving* v. *Virginia*, 388 U.S. 1. No such justification was offered here.

2. Appellants also contend (J.S. 11-12) that Plan II does not abridge the voting rights of black citizens. At the core of this contention is appellants' view that abridgment of voting rights occurs only "when the black minority is denied meaningful access to the political process" (J.S. 11). That is not the law. Abridgment or dilution of voting rights occurs when a group of voters is denied full, fair, and equal access to the political process. See, *e.g., Reynolds* v. *Sims,* 377 U.S. 533.

Appellants bore the burden of showing that Plan II would not abridge the right of black citizens to vote. *Georgia* v. *United States,* 411 U.S. 526. The district court, after carefully reviewing Plan II in its historical and political context, found that as a practical matter the plan ensured that whites, representing only 65 percent of total registered voters, would control at least 86 percent of the council seats (six seats out of seven). The court properly determined that that result accomplished a substantial dilution of the voting rights of black voters.

3. Appellants further contend (J.S. 12-13) that the district court erred in considering the impact of the at-large councilmanic elections when evaluating the dilutive effect of Plan II. We believe the district court acted properly in considering all aspects of the City's councilmanic election scheme in passing upon the effect of the redistricting proposal before it. The dilutive effect of Plan II cannot be understood in a vacuum; the fact that two at-large council seats will inevitably be controlled by whites bears upon the question whether Plan II will have the effect of denying black voters full, fair, and equal participation in the selection of council members.

In any event, even ignoring the at-large seats, Plan II has the practical effect of ensuring white control of at

least 80 percent of the single-member district seats on the Council (four seats out of five) and thus substantially curtails the effectiveness of the black vote. This is the necessary result of the Council's insistence upon north-south redistricting (J.S. App. 38a):

> When the five councilmanic districts are constructed vertically—by dividing lines drawn northwardly and southwardly across the entire city—it is difficult to avoid the result that each district will combine a segment of the east-west black belt with segments of contiguous white areas. Rather, the likely result is all or nearly all districts with a preponderance of white inhabitants and voters. * * *

Other redistricting schemes are feasible (see J.S. App. 53a) and a less discriminatory one should be chosen.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

J. STANLEY POTTINGER,
Assistant Attorney General.

GERALD W. JONES,
JAMES R. KIECKHEFER,
Attorneys.

SEPTEMBER 1974.

DOJ-1974-09

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-1869

PETER H. BEER, ET AL,

Appellants,

versus

UNITED STATES OF AMERICA, ET AL,

and

JOHNNY JACKSON, JR., ET AL,

Appellees.

MOTION TO DISMISS APPEAL
FOR FAILURE TO PROSECUTE

Pursuant to the Rules of this Court, appellees Johnny Jackson, Jr., et al, hereby respectfully move this Court to dismiss the appeal herein on grounds that appellants have failed to prosecute the appeal by timely filing their brief. As of the date of this writing, January 7, 1975, appellants have still not filed their brief on the merits. The undersigned counsel for Johnny Jackson, Jr., et al, Stanley A. Halpin, Jr., contacted by telephone Michael Rodak, Jr., Clerk of this Court on January 7, 1975, and Mr. Rodak stated that appellants' brief had not yet been filed in spite of repeated pleadings from his office to appellants' counsel. Mr. Rodak further informed undersigned counsel that appellants had neither sought nor obtained an extension of time within which to file their brief.

Not only is appellants' failure to timely file their brief a violation of this Court's Rules, for which sanctions should be imposed, but also the failure of appellants to timely file their brief will cause a delay in this appeal which will have serious

substantive effects because of the peculiar circumstances of this case. Specifically, although the Council of the City of New Orleans should have stood for election in the latter part of 1973, no elections have been held for City Council, and the previously elected City Councilmen are now holding over in office pending the outcome of this appeal. In a parallel case, Johnny Jackson, Jr., et al v. Council of the City of New Orleans, et al, C.A. No. 73-1862 "D", U.S.D.C., E.D. La., a District Court in New Orleans having appointed a Special Master to devise a racially fair plan of redistricting for the Council, held its proceedings in abeyance pending the outcome of this present appeal.

While your movers have no special insight into the motivations of appellants in failing to timely file their brief with this Court, they can say with certainty that delays in this appeal will benefit the incumbent Councilmen in that the longer this appeal is delayed, the longer they will be able to remain in office without facing an election.

WHEREFORE, considering the failure of appellants to file their brief on the merits, which was due November 29, 1974, appellees Johnny Jackson, Jr., et al respectfully urge this Court to dismiss the appeal and/or to bring to bear upon appellants other sanctions appropriate under the circumstances.

Respectfully submitted,

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CERTIFICATE

I, Stanley A. Halpin, Jr., one of the attorneys for Johnny Jackson, Jr., et al, appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of January, 1975, I served copies of the foregoing Motion to Dismiss Appeal for Failure to Prosecute upon the parties hereto by mailing a copy by first class mail, postage prepaid, to the following:

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Attorney for Appellees
Johnny Jackson, Jr., et al

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JAN 16 1975
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-1869

PETER H. BEER, ET AL,

Appellants,

versus

UNITED STATES OF AMERICA, ET AL,

and

JOHNNY JACKSON, JR., ET AL,

Appellees.

OPPOSITION TO MOTION TO DISMISS
APPEAL FOR FAILURE TO PROSECUTE

The Appellants hereby oppose the Motion To Dismiss Appeal For Failure to Prosecute filed herein by the Intervenors--Appellees.

Following the noting of Probable Jurisdiction by this Court, Appellants through their Counsel undersigned, sought to avail themselves of the provisions of Rule 36, Paragraphs 4 and 5, and Counsel for the Appellees consented to the use of that procedure. However,. Counsel were discouraged from using that procedure and were urged to agree among themselves on the contents of the single Appendix. Accordingly, a great deal of time was spent by Counsel in reviewing the record below and agreeing upon those matters which should be included in the Appendix and in arranging for the printing of the Appendix which included several maps (one in two colors). Counsel were urged to first file the Appendix

with the Court and to file the Brief as soon as possible. The Appendix (in two Volumes) has been filed herein and served upon the Appellees.

Because of the time involved in preparing the Appendix, Counsel for the Appellants were unable to address themselves to the timely preparation of Appellants' Brief. In the meantime, several other professional obligations interferred including the preparation for trial and the trial of an important case in Federal Court which had been pending for more than five years and involving many parties and many Counsel and which had been specifically set for trial with the understanding between Counsel and the Court that the trial of the case would not be continued.

The trial referred to was concluded on January 10, 1975 and the preparation of Appellants' Brief is presently in its final stages. Appellants have made all arrangements for the printing of their Brief and expect to file their Brief by January 22, 1975 at the latest and possibly earlier.

The issues involved in this case are complex, require careful consideration and are important to all parties concerned and to the orderly application and administration of the Voting Rights Act of 1965, the extension of which Act the Congress presently has under consideration.

Appellants respectfully request that the Motion To Dismiss Appeal For Failure To Prosecute be denied and that Appellants be granted until January 22, 1975 for filing their Brief herein.

Respectfully submitted,

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Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Opposition To Motion To Dismiss Appeal For Failure To Prosecute upon Counsel for the Appellees by mailing a copy thereof this 14th day of January, 1975 by first class mail, postage prepaid, to Stanley A. Halpin, Jr., Esquire, Attorney for Appellees Johnny Jackson, Jr., et al, 344 Camp Street, Suite 1212, New Orleans, Louisiana 70130, and to the Solicitor General of the United States, Attorney for the United States, et al, Department of Justice, Washington, D.C. 20523.

James R. Stoner
Attorney for Appellants

Supreme Court, U. S.
FILED
JAN 22 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

v.

UNITED STATES OF AMERICA

and

WILLIAM B. SAXBE, Attorney General of the United States, Individually and in His Official Capacity,

and

JOHNNY JACKSON, JR., ET AL., *Appellees*

On Appeal From the United States District Court for the District of Columbia

BRIEF FOR APPELLANTS

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IN THE

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OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, ET AL., *Appellants*

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On Appeal From the United States District Court for the District of Columbia

---

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the United States District Court for the District of Columbia in the case at bar was reported at 374 F.Supp. 363. Pertinent papers of the lower court are reproduced in the Appendix to the Jurisdictional Statement (A.Jur.S.). They consist of the opinion of the court (A.Jur.S. 1a-72a) and the court's judgment (A.Jur.S. 73a-74a).

JURISDICTION

Appellants sought a Declaratory Judgment in the United States District Court for the District of Columbia that a redistricting plan for councilmanic elections in the City of New Orleans did not violate Section 5 of the Voting Rights Act of 1965, 79 Stat. 439 (1965), as amended, 84 Stat. 315 (1970), 42 U.S.C.A. Section 1973c (1974). Jurisdiction of the District Court over the case was founded upon the Voting Rights Act of 1965, *supra.* The District Court, sitting as a three-judge court under the requirements of that statute, denied the Appellants' request and dismissed the action in a judgment entered March 15, 1974. Appellants filed Notice of Appeal on April 5, 1974 in the United States District Court for the District of Columbia and this Court noted probable jurisdiction on October 15, 1974.

Jurisdiction is vested in this Court under Section 5 of the Voting Rights Act of 1965, *supra.,* and is supported by *Allen* v. *State Board of Elections,* 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d. 1 (1969) and *Perkins* v. *Matthews,* 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed.2d. 476 (1971).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case focuses upon Section 5 of the Voting Rights Act of 1965, *supra.,* which is not set out verbatim here due to its length (A.Jur. 5a-6a). An ordinance passed by the Council of the City of New Orleans, Louisiana, Ordinance No. 5154, Mayor Council Series, which was enacted on May 3, 1973, is also involved in this case. (A. 12).

QUESTIONS PRESENTED

1. Whether the Court below improperly held that § 5 of the Voting Rights Act of 1965 was applicable to at-large council seats, provision for which had been in effect and unaltered in New Orleans since prior to November 1, 1964, the effective date for this purpose of the Voting Rights Act of 1965.

2. Whether the Court considered and applied improper criteria in evaluating the redistricting plan and measured the effect of the plan with regard to its impact on minority voting rights against improper legal standards.

3. Whether the court improperly determined that the redistricting plan would have the effect of abridging the right to vote on account of race or color.

STATEMENT OF CASE

The present Charter of the City of New Orleans became effective on May 1, 1954. This Home Rule Charter for the first time set up a Mayor-Council form of government in which the mayor assumes the executive duties of government, and the City Council performs a primarily legislative function. The Charter totally re-organized the City Council, providing for a total of seven members, two of whom are elected at large, and five of whom are elected from single member geographical districts of equal population. The Charter provision is as follows:

> "Section 3-120. Number and Terms of Councilmen. The Council shall consist of seven members, of whom five shall be elected from districts and two from the City at large. The terms of councilmen shall be four years beginning on the first Monday in May next following their election except that a councilman selected to fill a vacancy

shall serve only for the remainder of the unexpired term." (A. 15)

The responsibilities of the two at-large councilmen differ from the others in that one of them, by appointment of the mayor, temporarily assumes the executive duties of government when the mayor is away or otherwise unavailable. One of the at-large councilmen holds the position of President of the City Council, a position which alternates between them every four months. The at-large councilmen are also ex-officio members of the New Orleans Sewage and Water Board, an independent governmental agency chartered by the State of Louisiana, and are ex-officio members of the Board of Liquidation of Debt of City of New Orleans, an independent board chartered by the State Constitution to administer the City debt structure. In addition, the two at-large councilmen alternate as members of the Louisiana Stadium & Exhibition District Commission.

Section 3-103(3) of the City Charter mandates the City Council to redraw the five single-member districts in the City into equally populated districts within 6 months after the official publication of each federal decennial census. The method of voting for the two at-large councilmen is not affected by this section. The section is as follows:

> "Section 1-103(3). It shall be the mandatory duty of the Council to redistrict the City by ordinance within six months after the official publication by the United States of the population of the City as enumerated in each decennial census. Each councilmanic district shall contain as nearly as possible the population factor obtained by dividing by five the City's population as shown by the decennial census." (A. 16)

After the 1960 census figures were published, the councilmen re-districted the City into five districts of equal population as required by the above provision of the City Charter. (A. 621).

Thereafter the Voting Rights Act of 1965 was passed by the Congress. 42 U.S.C.A. § 1973c (Supp. 1972). Section 5 of the Act provides in pertinent part:

> "Whenever a State or political subdivision . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure. *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission . . . Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court."

When the next decenial census figures were published in 1971, the City Council, obeying the mandate

of the City Charter, initiated procedures to redraw the boundaries of the five single-member districts. The Councilmen recognized that Section 5 of the Voting Rights Act of 1965 imposed two new requirements on this procedure. First, consideration must be given to the racial composition of New Orleans in drawing up a plan that does not have the purpose and effect of denying or abridging the right to vote on account of race or color. Second, the plan should be submitted to the Attorney General of the United States for his approval.

On March 2, 1972, the City Council passed a redistricting ordinance, commonly referred to as Plan I, and submitted the plan to the Attorney General of the United States for approval. The Attorney General interposed an objection to Plan I on January 15, 1973. (A. 29, 30).

As a result of the extensive and comprehensive public hearings held concerning Plan I, and before the Attorney General interposed an objection to Plan I, the Council approved two ordinances offering the voters of New Orleans alternatives to the seven-member legislative body and successively submitted them to separate city-wide referenda. The first called for an expansion to eleven members, and the second for an expansion to nine members, both retaining two at-large Council seats. The two ordinances were defeated by the electorate.

The City Council passed Ordinance No. 5154 Mayor Council Series (hereinafter referred to as "M.C.S.") on May 3, 1973, commonly denoted as Plan II, and submitted it to the Attorney General for approval. The Attorney General interposed an objection to the plan on July 9, 1973, stating in part ". . . the boundary

lines prescribed by Ordinance 5154 M.C.S. appear to effect a dilution of black voting strength . . .", and further states that the plan ". . . combines a number of black voters with a larger number of white voters in four of the five districts." (A. 33-35). The objections of the Attorney General left the redistricting plan inoperative.

Appellants, six members of the City Council, filed an action on July 25, 1973 in the United States District Court for the District of Columbia on behalf of the City of New Orleans against the United States of America. Appellants sought a declaratory judgment under Sec. 5 of the Voting Rights Act of 1965, *supra,* that the second councilmanic redistricting Plan (Plan II) has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.

The three judge federal court held four days of hearings in August and October, 1973 (A. 58-498), accepted briefs from all the parties and held oral arguments in January, 1974. On March 15, 1974, the court rendered an opinion and judgment (A. Jur. S. 1a-74a) denying declaratory judgment and dismissing the Appellants' action. Appellants brought this appeal from that decision to the Supreme Court of the United States, as provided in Section 5 of the Voting Rights Act, *supra.* This Court, noted probable jurisdiction on October 15, 1974.

Prior to the adoption and submission of Plan II, various other plans had been considered by the City Council and the electorate. The electorate had participated in the process through public hearings and the two referenda held on the question of increasing the size of the City Council. The plans, including

Plan II, were originally developed by the Research Staff of the City Council from guidelines which included recommendations arising from the Attorney General's opinions, case opinions, public sentiment, the National Association for the Advancement of Colored People (NAACP), and local political parties. Neither Plan I nor Plan II in any way altered or affected the election of the two at-large members of the City Council.

The guidelines included recommendations to avoid the dilution of minority rights, to achieve mathematical balance of population, to devise contiguous and compact councilmanic districts, to observe certain natural and historical boundaries, and to adhere to established Ward and Precinct boundaries to the extent possible. (A. 183-198).

The map appearing in the Appendix at page 620 shows the distribution of black and white voters in the City and the geographic division of the City as embodied in Plan II. (See also the map appearing in the Appendix at page 624). The 1961 redistricting plan, now in effect, appears in the Appendix at page 621. The NAACP Plan, which does not differ significantly from Plan II, appears in the Appendix at page 625.

SUMMARY OF ARGUMENT

I. The District Court held the at-large voting system subject to the provisions of the Voting Rights Act despite the fact that the at-large voting system had not been changed by Plan II and therefore was not subject to the Voting Rights Act of 1965. The at-large voting system had been in effect since the effective date of the Home Rule City Charter on May 1, 1954 and since there was no change in the at-large voting system, the District Court improperly held that it was subject to the Voting Rights Act of 1965.

II. A. The District Court employed an improper definition of dilution in analyzing the redistricting plan under Section 5. The Court should have applied the test of the effect of the voting law by itself on the weight of the vote. The Court imposed a definition of dilution which was broader and harsher than the requirements of Section 5.

II. B. The District Court misapplied the "compelling state interest" test to this case which is a case of a reapportionment nature under Section 5 of the Voting Rights Act. This Court has applied the "compelling state interest" test in cases involving direct restrictions on a citizen's right and ability to vote. Cases of a reapportionment nature, such as this case, have been decided under a "rational basis rule." The District Court applied the wrong standard in this case.

II. C. The District Court established an unprecedented burden of proof when it found that the City of New Orleans had the burden of proving that nothing but the redistricting plan contained in Plan II was feasible. No comprehensive redistricting plan can be formulated which is the only plan feasible. Reasonable variations must be permissible. The City Council, in adopting Plan II, applied proper and reasonable guidelines and the plan does not have the purpose and effect of denying or abridging the right to vote on account of race or color.

II. D. The District Court misapplied the Voting Rights Act of 1965 in finding that any deviation from maximal black voting strength was *ipso facto* a violation of the act.

ARGUMENT

I. THE LOWER COURT SHOULD HAVE OMITTED THE AT-LARGE VOTING SYSTEM FROM ITS CONSIDERATION SINCE IT REMAINED UNCHANGED AND WAS NOT SUBJECT TO THE VOTING RIGHTS ACT OF 1965

The Council of the City of New Orleans is composed of seven members, two of whom are elected at-large, and five of whom are elected from single-member districts. The City Charter requires the redrawing of lines of the five districts after the publication of each decennial census. The redistricting which was proposed as Plan II was passed by ordinance in 1973. All changes in voting laws of states or political subdivisions are subject to Section 5 of the Voting Rights Act if these changes were effected after November 1, 1964. The election system for the two at-large councilmen was not changed to any degree by Plan II. The at-large election system has remained unchanged since the City Charter became effective on May 1, 1954.

The statute on its face therefore does not require consideration of the at-large voting system under Section 5 of the Act. Although this Court has established in past cases that election laws which have not changed since November 1, 1964 may be subject to the approval requirements of Section 5, this Court has only permitted judicial review of unaltered voting systems which were related to altered redistricting proposals as in *Georgia* v. *United States*, 411 U.S. 526 (1973) (plan changing the number and size of multi-member districts as well as single-member districts) and *City of Petersburg*, 354 F. Supp. 1021 (D.D.C. 1972) affirmed 410 U.S. 962 (1973) (process of annexation).

These cases involved reformulated redistricting plans which would have affected the outcome of elections in the unaltered voting systems. The unaltered

systems were therefore properly subjected to Section 5 standards as they were included in the political context in which the altered voting system would operate.

In the instant case the redistricting of the single-member districts will have no effect upon the outcome of elections in the at-large systems. The two voting systems are completely separate in form and substance. The at-large voting system will not operate to any degree in the same political context in which the single-district procedure will function. Since the at-large system has not been altered in any way since November 1, 1964, the lower court erred in including the at-large procedure in its consideration.

The District Court, on its own initiative, has effected a sudden and far-reaching extension of the scope of the Voting Rights Act. A comprehensive voting system must have ordinances which are interrelated in order to succeed in our increasingly complex society. Yet such a voting system in its entirety is now made completely vulnerable to federal scrutiny upon the alternation of a minor ordinance. The time threshold in Section 5 has been ignored by the District Court in its unprecedented action.

The dual voting system which includes two at-large seats and five single-member district seats was established in the Home Rule Charter of the City of New Orleans which became effective on May 1, 1954. This Charter for the first time set up a Mayor-Council form of government with the Mayor assuming the executive duties of government and the Council performing primarily the legislative function. However, the two at-large councilmen have separate and distinct responsi-

bilities from the other councilmen in addition to their normal legislative responsibilities as members of the Council. One of the at-large councilmen, by appointment of the Mayor, temporarily assumes the executive duties of government when the Mayor is away or otherwise unavailable. The at-large councilmen are also ex-officio members of the New Orleans Sewage and Water Board, an independent governmental agency chartered by the State of Louisiana, and are ex-officio members of the Board of Liquidation of Debt of City of New Orleans, an independent board chartered by the State Constitution to administer the City debt structure. The two at-large councilmen alternate as members of the Louisiana Stadium & Exhibition District Commission. In addition, one of the at-large councilmen holds the position of President of the City Council, a position which alternates between them every four months.

Thus it is readily apparent that the two at-large Council seats are different and distinct from the other five Council seats and they cannot be treated as though all seven seats have the same characteristics with the same responsibilities. The court below treated all seven Council seats as though they were the same, when in fact they are not. The at-large voting system was not changed, and this Court must reverse the decision of the lower court and hold that the unaltered at-large voting system is not properly within the ambit of Section 5.

II. THE DISTRICT COURT HAS APPLIED IMPROPER CRITERIA AND EMPLOYED IMPROPER STANDARDS IN WEIGHING THE EFFECTS OF THE REDISTRICTING PLAN UPON BLACK VOTING STRENGTH IN NEW ORLEANS

A. The District Court utilized an improper standard in determining the dilutionary effects of Plan II

The Voting Rights Act of 1965, *supra,* was enacted to prohibit certain states from discriminating against minority voters through voting laws. The law specifically requires that a state or political subdivision thereof must seek approval from the United States Attorney General or the United States District Court of the District of Columbia whenever it "enacts or seeks to administer any voting qualification or prerequisite to voting, or standard, practice or procedure" which differs from that in force or effect on November 1, 1964, *Voting Rights Act, supra Section 5.* The Attorney General or District Court must affirm that the voting law does not have "the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." *Id.*

In *Allen* v. *Board of Elections*, 393 U.S. 544 (1968), this Court held that a multi-member voting plan was a voting qualification, standard, practice or procedure within the scope of Section 5. Any dilution of voting strength which might have occurred in implementing the new voting system for county supervisors was therefore implicitly found to be susceptible to Section 5 control.

In *Perkins* v. *Matthews,* 400 U.S. 379 (1971), this Court held that the proposal for city annexation of real property also constituted a voting law which could be embraced by Section 5. Such an annexation was thereby made vulnerable to the charge of dilution of voter strength in violation of Section 5. In neither

case did this Court attempt to decide whether the change in voting law actually did dilute voting strength; the issue was one of jurisdiction. The Court also did not define the nature of dilution of voter strength in this context.

The Court eventually alluded to the nature of dilution in apportionment cases, but has never considered the concept in a Section 5 case. The Court inexplicably introduced two primary definitions with very subtle, although massive, differences in implication.

The Court presented both definitions in the apportionment cases of *White* v. *Regester,* 412 U.S. 755 (1973), where the dilutionary effect of multi-member districts was at issue. The first standard of dilution was said to demand relief when multimember districts are being "used insidiously to cancel or minimize the voting strength of racial groups."

The second standard was employed when the Court asserted that the ". . . plaintiff's burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *White* v. *Regester, supra,* at 765, 766.

Allen and *Perkins* were both Section 5 cases which involved voting laws of a reapportionment nature. *Allen* implicitly indicated that since the multi-member voting procedure approximated a reapportionment situation, the dilutionary effect of a voting law requiring approval of the courts under Section 5 could

be examined in the same way as it might have been examined under reapportionment law. This Court returned to *Allen* in *Perkins,* stating in the context of Section 5 cases that, "Congress intended to adopt the concept of voting articulated in *Reynolds* v. *Sims* . . . (to) protect Negroes against dilution of their voting power." *Fairley* v. *Patterson,* 393 U.S. 544, 588 (1969), as quoted in *Perkins* v. *Matthews, supra,* at 390. The problem now has arisen as to the standard of "dilution" to be employed in determining whether dilution of the vote on account of race or color has occurred in Section 5 cases.

This Court has discussed the dilution test a number of times in apportionment cases, *Cf. Fortson* v. *Dorsey,* 379 U.S. 433 (1965), *Whitcomb* v. *Chavis,* 403 U.S. 121 (1971), *White* v. *Regester, supra,* and employed the rule once in an apportionment case. *White* v. *Regester, supra.* The dilution rule has never been applied by this Court to a Section 5 case to determine whether dilution has resulted from the implementation of a voting law within the scope of Section 5.

The lower court in the instant case applied one of the two dilution standards enunciated by this Court to Plan II adopted by the City Council of New Orleans and found that dilution had occurred. It is clear that the District Court employed the improper definition of dilution in analyzing the redistricting proposal under Section 5. The court chose the latter and quoted *White* v. *Regester, supra.* (A. Jur. S. 36a).

The difference between the two standards proposed by the Court are subtle but substantial. The "cancelling" standard finds dilution where voting laws would operate to "minimize or cancel out the voting

strength of racial or political elements of the voting population." Upon careful study of the phrase it becomes clear that this standard implicitly takes the view that the only relevant criterion in determining whether voting rights have been weakened is the effect of the voting law *by itself* on the weight of the vote. In the instant case, under this standard, the study of the dilutionary effects of Plan II would be limited to the actual effect of its implementation upon black voting strength in the City of New Orleans.

The "opportunity" standard would note dilution where "the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Whitcomb* v. *Chavis, supra,* at 765, 766.

This standard is susceptible to the interpretation that the voting law in question is *not* the sole criterion in discerning whether dilution of voting strength has occurred. Implicit in the phrase "had less opportunity" lies the freedom of the court to search for other possible factors, both within and beyond the control of the legislators, which might have contributed to the dilution of voting strength in tandem with the enervating effect of the voting law.

This second definition has far-reaching implications in that a court would look to the entire social, economic and political context and strike down a voting law which did not *itself* ameliorate the specific damages resulting from these other facts or even though the law *itself* produces effects which do not deny or abridge the right to vote on account of race or color.

The distinction between the two definitions is very important, and must be analyzed in the context of the comprehensive prohibitions stated in Section 5. The dilution standard is a rule devised by the reapportionment cases. In introducing this standard of dilution into Section 5 cases, the courts cannot impose a harsher and broader standard than the Congress has already established through its statutory language. The purpose of Section 5 is to insure the implementation of state and political subdivision law which "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . ." *Voting Rights Act, supra,* Section 5. A definition of dilution must not be employed which is broader and harsher in coverage than this requirement of Section 5. Close examination of the statute reveals that the second definition, which was employed by the lower court, is harsher and broader than the Section 5 language. Both Section 5 and the first definition converge and indicate that the only relevant criterion in determining whether dilution has occurred is to examine the effect which the statute in question has *by itself* on minority voting strength.

The lower court chose, however, to use the more expansive and looser definition, in derogation of the requirements of Section 5. The liberties which may be taken by a court in employing the second more liberal definition become apparent in cases such as *Zimmer* v. *McKeithen,* 485 F.2d 1297 (1973), and *Turner* v. *McKeithen,* 490 F.2d 191 (1973). It must be emphasized that these were in the nature of reapportionment cases, *not* Section 5 cases. The lower court in the instant case relied heavily on these cases in analyzing Plan II.

In *Zimmer,* the U.S. Court of Appeals implicitly expanded the application of the second Supreme Court definition. The court stated that ". . . although population is the proper measure of equality in apportionment, in *Whitcomb* and *White,* the Supreme Court announced that access to the political process and not population was the barometer of dilution of minority voting strength." *Zimmer, supra,* at 1303. The court thereby stripped this Court's standard of any reference to the voting statute involved in the case.

This allowed the court to investigate factors other than the specific statute or ordinance in question in order to determine whether dilution had occurred. The *Zimmer* court studied all the effects of past discrimination upon black voters in a Louisiana parish and concluded that the voters had been denied "access." Yet the court chose to ignore the fact that three black representatives had recently been elected under the voting system at issue.

This case involved a reapportionment adjudication. Yet, the exceedingly broad definition given to "dilution" by the *Zimmer* court too easily found its way into the reasoning of the lower court in the case at bar. *Zimmer* clearly and emphatically reveals the extent to which the mandate of Section 5 will be ignored if the increasingly liberalized "opportunity" and "access" definitions of "dilution" are utilized by the courts.

This comprehensive investigation may well have been justified in *Zimmer,* since the case lay in the realm of apportionment. But such analysis cannot be made in cases adjudicated under Section 5, since Section 5 explicitly demands that the dilutionary purpose and effect of the statute itself be determinative of the statute's validity.

B. The District Court improperly extended the burden of proving a "compelling state interest" to a voting law of a reapportionment nature under Section 5

Section 5 of the Voting Rights Act appears on its face to prohibit only discrimination which directly restricts the right and ability of a voter to cast his ballot. Such laws have included, inter alia, interpretation tests, white primaries, literacy tests, and grandfather clauses. In affirming the constitutionality of the Voting Rights Act in *South Carolina* v. *Katzenbach,* 383 U.S. 301 (1966), this Court gave no indication that the Act reached beyond these simple procedural devices for discrimination against minority voters on the basis of race or color.

The Court decided in *Fairley* v. *Patterson, supra,* a *companion case to Allen* v. *Board of Elections, supra,* that the Voting Rights Act forbade more complicated election laws which discriminated on the basis of race or color. The case involved, inter alia, the legality of a Mississippi state statute which permitted county boards of supervisors to alter the county election procedure from one requiring the election of county supervisors by district to a system requiring election at-large. The new statute did not pose any threat to the ability of a minority voter to cast his ballot on election day. Yet the court held that such election laws were within the scope of Section 5. The Court merely ruled on the jurisdictional issue, and made no decision as to the discriminatory effect of the voting law.

In *Perkins v. Matthews, supra,* this Court found that the scope of Section 5 extended to other complicated election laws. That case involved an attack on an ordinance permitting city annexation of real property which resulted in increased number of city

voters. The Court established that this ordinance also constituted a voting qualification, standard, practice or procedure within the scope of Section 5. Again, the court made no decision as to the discriminatory effect of the law in question; its attention was merely directed at jurisdiction.

The instant case implicitly continues the logical expansion of the scope of Section 5. The applicability of Section 5 to the redistricting plan at issue is accepted by all parties involved. This Court has not ruled on the applicability of Section 5 to redistricting plans such as Plan II, which are unaccompanied by annexations or changes from single-member to at-large voting systems. Many states have assumed that Section 5 embraces such laws and have submitted them to the Attorney General on their own initiative for approval. The Attorney General shares this assumption. In voluntarily submitting Plan II to the United States Attorney General, the City Attorney of the City of New Orleans implicitly recognized that the proposal was within the ambit of Section 5.

It readily becomes apparent that the expanding scope of Section 5 has increasingly encompassed voting rights procedures which approximate reapportionment formulas. The line of reapportionment cases has seen cases involving a shift from single-member to at-large voting, similar to that which occurred in *Allen,* city annexations of real property, such as occurred in *Perkins,* and the redrawing of councilmanic district lines, as occurred in this case. The procedure of adjudicating the laws of an apportionment nature such as those treated in these later cases differs greatly from the procedure governing the adjudication of the state and political subdivision laws which directly restrict

through literacy requirements and grandfather clauses the right and ability of a minority voter to cast his ballot.

In this case the nature of the burden of proof stands as the primary difference between procedure relating to laws of an apportionment nature under Section 5, and the procedure relating to laws of a more directly restrictive nature under Section 5. Section 5 presents a unique procedural requirement in locating the burden of proof, in that the state or political subdivision involved has the burden of proving the lack of discriminatory purpose and effect of its voting law, regardless of whether the statute or political subdivision acts as the plaintiff or defendant in the case. *Voting Rights Act, supra,* Section 5.

The location of that burden of proof is not contested in this case; the burden properly rests upon the Appellants. Appellants do contend that the nature of the burden was incorrectly formulated by the lower court, and that this error resulted from the trial court's refusal to accept the differing burdens of proof associated with the two divergent types of voting laws which have been encompassed by Section 5.

If any law passed by a state or political subdivision does not infringe on a person's Constitutional rights, the law will be sustained if the state or political subdivision successfully bears the burden of proving that any other infringement is justified because the law furthered a legitimate state interest on a rational basis. In a case where a statute or ordinance of any nature violates a constitutionally protected right, such as the right to equal protection guaranteed by the Fourteenth Amendment, the state or political subdivision which passed the law has the burden of proving

that the law furthers a compelling state interest. *Skinner* v. *Oklahoma,* 316 U.S. 535, *Williamson* v. *Lee Optical Co.,* 384 U.S. 483, *McLaughlin,* 379 U.S. 184, *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (see other cases on this subject listed in *Dunn* v. *Blumstein,* 405 U.S. 330 (1972)). The latter burden is an exceedingly heavy one since constitutionally protected rights are only cautiously inhibited.

These fraternal standards of proof have performed vigorous service in the development of American jurisprudence and have exerted a great role in determining the validity of the two general types of voting laws which lie within the scope of Section 5. This Court has frequently established that only a showing of a compelling state interest by a state or political subdivision will sustain the validity of the form of voting laws which effect direct restrictions on a registered voter's right to vote. *Dunn* v. *Blumstein, supra, Kramer* v. *Union Free School District,* 395 U.S. 621 (1969), *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1965), *Carrington* v. *Rush,* 380 U.S. 89. This results from the intolerable restrictions on the equal protection rights, guaranteed by the Fourteenth Amendment, of the individual involved.

On the other hand, this Court has always required states and their political subdivisions to show only a reasonable basis and a legitimate state interest for voting laws of a reapportionment nature. *Reynolds* v. *Sims,* 377 U.S. 533 (1964), *Swann* v. *Adams,* 385 U. S. 440 (1966), *Abate* v. *Mundt,* 403 U. S. 182 (1971), *Mahan* v. *Howell,* 410 U.S. 315 (1973). The Court asserted that substantial equality of population must be generated in states and their political subdivisions

among the electoral districts for any governmental body with legislative or general governmental powers.

The Court declared in *Reynolds* that divergences from equality of population which resulted in dilution of the weight of citizens' votes could be justified by a state or political subdivision through a showing of a rational basis for voting laws which diverged from substantial equality among the electoral districts. "So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviation from the equal-population principle are consititutionaly permissable . . ." *Reynolds* v. *Sims, supra,* at 579-580.

The cases concerning direct restrictions on a citizens' right and ability to vote have been judged on a compelling state interest standard. The cases of a reapportionment nature have fallen under a rational basis rule. Courts have not encountered difficulty in selecting the burden of proof to be applied in particular voting rights cases, since the two types of cases have generally been adjudicated in separate sequences of precedent. This Court has always judged laws of an apportionment nature such as the New Orleans Plan II which is presently before it on a rational basis standard.

The lower court made a surprising leap of logic in applying the compelling state interest standard to this case. In its opinion, the lower court stated the following:

> Dilutions of the right to vote which are to be tested by the equal protection standard—which involves a balancing of competing governmental and private interests—may withstand analysis

upon a firm showing that they are rationally related to a permissible governmental interest. But, the Supreme Court admonishes, "a more exacting test is required for any [governmental action] that 'place[s] a "condition" on the exercise of the right to vote.'" In pursuing even the most substantial of its interests, government "cannot choose means which unecessarily burden or restrict constitutionally protected activity." So, if a challenged statute grants the right to vote to some citizens and denies the franchise to others, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.'" . . . We have no doubt whatever that in light of the strictness of the Fifteenth Amendment, the standard which justification of denial of voting rights must meet applies equally to dilutions of those rights. Nor do we doubt that Section 5 of the Voting Rights Act accomodates any less than the Fifteenth Amendment demands. (A. Jur. S. 51, 52a)

The lower court applied the compelling state interest standard to the redistricting formula proposed by the City of New Orleans and found that the city had not met its burden. The court found in its own calculations, which are hereafter challenged that the redistricting ordinance did not further a compelling state interest in diverging from a redistricting scheme which would provide optimal voting strength for black registered voters.

The lower court has grossly erred in requiring the appellants to show that the deviations from optimal black voting strength were furthered by a compelling state interest. The burden which the City of New Orleans bears in this case should be the same as the burden borne by states and political subdivision in reapportionment cases.

This Court declared in *Reynolds* v. *Sims, supra,* that reapportionment proposals must be based on substantial equality of population. Yet such equality is not enforced by the application of a compelling state interest standard. The nature of the law under consideration in *Reynolds* differs little in substance from the law at issue in the instant case. The compelling state interest standard would place an unduly harsh burden on proposals, such as Plan II, of a reapportionment nature. The Court stated in *Abate* v. *Mundt, supra,* a reapportionment case at the county level, that ". . . viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing societal needs . . ." *Abate* v. *Mundt, supra,* at 185, citing *Sailors* v. *Board of Education,* 317 U.S. 105, 110-111 (1967). ". . . our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality." *Id.,* at 185.

This need for experimentation and flexibility at the local level has resulted in the application of a rational basis standard to reapportionment cases. Mr. Justice Holmes emphasized the desirability of this freedom many years ago, "we must remember that the machinery of government would not work if it were not allowed a little play in its joints." *Bain Peanut Co.* v. *Pension,* 282 U.S. 399. Plan II of the City of New Orleans is very similar to a reapportionment case and must be judged on the same basis.

There should be no difference in the standard which protects the vote of minority voters from dilution under reapportionment cases and the standard which protects the rights of minority voters in cases of a reapportion-

ment nature which fall under Section 5. Yet the lower court has generated such a change. In *White* v. *Regester, supra,* a reapportionment case, this Court found that the voting power of black and Mexican-American voters had been unjustly diluted. This Court in that decision gave no indication that the usual application of a reasonable basis standard in reapportionment cases to such dilutionary effects had been abandoned in favor of a compelling state interest standard. The lower court in its decision in this case has deviated from this Court's application of the reasonable basis standard to cases of a reapportionment nature.

The Supreme Court has never employed the compelling state interest standard in apportionment type cases. The Attorney General in ruling on Plan II, rejected the redistricting proposal on the grounds that the City of New Orleans had not shown a compelling state interest in deviating from optimal voting strength. As the lower court had done, the Attorney General presented no authority for employing this standard. Under *South Carolina* v. *Katzenbach, supra,* states and political subdivisions submitting changes in voting laws to the Attorney General bear the same burden as they would in obtaining approval of such changes from the District Court. This Court should act to ensure that the Attorney General will not establish precedent for continued use of the compelling state interest standard in cases similar to the case at bar arising under Section 5.

This Court must remedy the lower court's drastic extension of legal doctrine in judging the dilution of black voting strength on a standard of compelling state interest, and must reverse the lower court and, applying the reasonable basis test, find that Plan II passes constitutional muster.

C. The District Court improperly held that the City had the burden of proving that nothing but the redistricting proposed by Plan II was feasible.

As previously discussed, the court below incorrectly applied the compelling state interest test to this case. Having done so, the court went even further in requiring that "the burden on the case at bar was at least to demonstrate that nothing but this redistricting proposed by Plan II was feasible." (A. Jur. S. 53a)

The footnote to the court's statement of the burden in this case at bar directs the reader to the court's textual discussion at footnotes 235 and 236. Rather than support the court's unique extrapolation of the burden, this textual discussion only enunciates the procedure of the Voting Rights Act which shifts the burden of proof to the state or political subdivision in cases within the scope of the Act. That textual discussion, and the cases cited therein, do not deal at all with a description of the nature of that burden.

The District Court would require that the state or political subdivision show that there were no other reasonable alternatives *at all.* This strange and illogical test would be impossible for any redistricting proposal to meet. No comprehensive redistricting plan can be formulated which is the only plan feasible. Reasonable variations can always be made to achieve the same ends.

In the Voting Rights Act of 1965, the Congress established the procedure to be followed by a state or political subdivision in order to effectuate the change in its voting procedures. This procedure included the submission of the plan to the Attorney General and the filing of a Declaratory Judgment action in the United States District Court for the District of Columbia. In

any Declaratory Judgment action, the burden of proof is by the preponderance of the evidence. The District Court in this decision has parted from that principal and has required that the political subdivision must prove that its plan is the only feasible plan. This ruling makes a sham out of the Declaratory Judgment procedure established in the Act by Congress since a court could easily rule that any plan presented to it did not meet the test of the statute since the political subdivision has failed "... to demonstrate that nothing but this redistricting proposed ... was feasible." (A. Jur. S. 53a)

In the case at bar, the City of New Orleans has met the burden established in the Act. The guidelines which were used in formulating the plan by its professional Council Research Staff and by its Council members and which included among other things the following guidelines:

1. Redistricting should be accomplished without diluting the voting rights of any minority group in the City of New Orleans. (A. 176, A. 205-206, A. 330-331)
2. Redistricting should be accomplished to achieve as nearly as possible a mathematical balance of population within each of the five (5) districts in order to insure compliance with the "one man-one vote" edict. (A. 176, A. 205-206, A. 326)
3. Wherever possible existing Ward and Precinct boundaries would not be disturbed by councilmanic district boundaries. (A. 186-187, A. 200, A. 327)
4. To the extent possible, historic and traditional councilmanic district boundaries would be observed

in order to preserve continuity within the electorate of the City of New Orleans. (A. 176, A. 205)

5. Natural boundaries created by the Mississippi River and Lake Pontchartrain and the economic and social effect of the river and lake on the City were to be considered. (A. 176, A. 205-206)
6. Man-made boundaries created in the form of important streets and highways and canals, majority of which run in a north-south direction, were to be observed. (A. 183-186, A. 200)
7. Prospective councilmanic districts should be contiguous and compact. (A. 325-326)

In addition to the foregoing guidelines and the data received from the Census Bureau, the Staff had received a proposed plan from the NAACP (A. 625) and a plan from the Republican Party (A.626).

Although the plans submitted by the NAACP and the Republican Party, in the opinion of the Staff, did not meet the requirements of compactness (A. 202, 336) the NAACP plan served as a valuable tool in the development of the second plan. An example of this is shown in the Staff handling of Councilmanic District B.

When faced with the large black voter concentration in existing District B and also faced with the need to increase the population of District B in order to meet the standards of the one man-one vote edict, the Staff was confronted with three possibilities. First, they could add population to District B by including all or part of Algiers, the only section of New Orleans

being on the west side of the Mississippi River. To do so, however, would have pitted the citizens of Algiers, who wanted another bridge across the river, against the citizens of existing District B who did not particularly want another bridge. Secondly, the Research Staff could have expanded, District B into the Fourteenth Ward to increase its population but by doing so would have been adding white voters which, in turn, would have the effect of diluting District B minority voting strength. Thirdly, in order to increase the population of District B and to avoid dilution, the Staff followed the suggestion of the NAACP by expanding existing District B into the Second Ward which slightly increased the black voting strength in District B. (A. 341). In other words, the Research Staff accepted the suggestion of the NAACP in the handling of District B as presenting the wishes of the black community (A. 341) and as the proper method of handling the expansion of District B to conform with the 1965 Voting Rights Act. Plan II which is before the Court includes the same Districts A and B as the NAACP plan.

Other examples of the procedure used by the Professional Research Staff and the Councilmen in arriving at Plan II could be given. Without getting into detail the Court's attention is directed to the testimony of Professional Research Staff Director James N. Pezant (A. 171-247), (A. 294-318) and Councilmen Research Staff employee Jonathan A. Eckert (A. 324-352), and to the testimony of Councilmen Peter H. Beer (A. 91-166), Philip C. Ciaccio (A. 358-392), John D. Lambert, Jr. (A. 469-478) and James A. Moreau (A. 247-292).

D. The District Court improperly measured the standards set forth in the Voting Rights Act of 1965

The District court allowed itself to get into a numerical formulation of maximal black voting strength and to conclude that any deviation from maximal black voting strength was *ipso facto* a violation of the Voting Rights Act of 1965. According to the opinion, any redistricing plan that did not maximize the potential of black voting strength, considering that black voters would vote as a bloc, would *ipso facto* "have the effect of denying or abridging the right to vote on account of race or color . . ." This conclusion is wrong. The court cited no precedent for its calculations. The court has improperly established a new standard by which to interpret the Voting Rights Act of 1965.

By this unprecedented procedure, the court allowed itself to find that Plan II had "the effect of denying or abridging the right to vote on account of race or color . . . ", and even stated that, having ruled on the *effect* of the Plan it did not have to consider the *purpose* of the Plan. In other words, the court construed the statute as though it read purpose *or* effect when in fact the statutory language is purpose *and* effect. This is clearly a misinterpretation of the statute.

Thus the court, in an attempt to prove that Plan II violated the Voting Rights Act of 1965, fell victim to its own pre-conceived ideas, unfounded in precedent, that a plan that did not realize optimal black voting strength according to the Court's calculations was *ipso facto* dilution of black voting strength in violation of the Voting Rights Act of 1965.

CONCLUSION

We have seen that the District Court improperly included in its judicial review of Plan II the unaltered at-large voting system contained in the Home Rule Charter which had been in effect since May 1, 1954; further that the District Court applied improper criteria and employed improper standards by extending the "compelling state interest" doctrine to a redistricting statute when such doctrine has been limited to direct restrictions on a citizen's right to cast his vote; that the District Court should have applied the reasonable basis test to determine whether the redistricting considerations are rationally related to permissible governmental interests; that the District Court applied an improper burden of proof in holding that the City had the burden of showing that Plan II was the only feasible plan; and that the District Court erred in concluding that any deviation from maximal black voting strength had the effect of denying or abridging the right to vote on account of race or color. The District Court has compounded its errors and this Court should reverse the decision of the District Court. The City Council applied proper criteria and guidelines in formulating Plan II. It is a reasonable redistricting plan which does not have the purpose and effect of denying or abridging the right to vote on account of race or color. This Court should reverse the District

Court and decree that Plan II complies with the Voting Rights Act of 1965 so that the Plan can become operative.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1869

PETER H. BEER, *et al.*,

Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,

and

JOHNNY JACKSON, JR., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES JOHNNY JACKSON, JR., *ET AL.*

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BRIEF FOR APPELLEES JOHNNY JACKSON, JR., *ET AL.*

Questions Presented

1. Did plaintiffs prove that Plan II will not have the effect of denying or abridging the right to vote on account of race or color?

2. Did plaintiffs prove that Plan II did not have the purpose of denying or abridging the right to vote on account of race or color?

Summary of Argument

I. 1. Section 5 of the Voting Rights Act was adopted to prevent states and subdivisions with a history of discrimination in voting from devising new schemes to disenfranchise minority voters. Section 5 was applied to redistricting laws because ordinary constitutional challenges had proved ineffective in preventing the dilution of black voting strength. Congress was concerned in particular to forbid through section 5 the implementation of districting plans which divided concentrations of black voters among several predominantly white districts. Such plans are impermissible under section 5 regardless of whether they have a "rational basis."

2. Plan II is precisely the type of districting plan which section 5 was intended to prevent. The District Court correctly concluded that black voters in New Orleans were concentrated in an east-west belt. Plan II systematically divided that black concentration among five different city council districts with substantial numbers of white voters. The adverse effect of this division on black voters was aggravated by the pattern of bloc voting along racial lines in New Orleans.

II. Plaintiffs failed to establish that Plan II was a good faith effort to correct the undisputed defects in Plan I. Plan II was prepared before the Attorney General objected to Plan I, and necessarily failed to take into account the nature of those objections. Plan II was fashioned to solve problems regarding the predominantly white Algiers section, and its effect on the fragmentation of the black community was both incidental and largely insignificant. Since Plan II was enacted by city councilmen with a vested interest in diluting the voting strength of the black community, and since Plan II had precisely that effect, the conclusion is inescapable that such dilution was the purpose of Plan II.

Argument

In 1965, after extensive hearings and debate, and in the face of evidence that less drastic measures had proved ineffective, Congress adopted the Federal Voting Rights Act. The Act implemented Congress' firm intention to rid the country of racial discrimination in voting, and provided stringent new remedies against those practices which had most frequently denied citizens the right to vote on the basis of race. The Act suspended for five (now ten) years the use of certain "tests and devices" which Congress believed had been adopted or administered so as to discriminate on the basis of race. 42 U.S.C. §1937b. Although none of these tests or devices were unconstitutional *per se*, this Court upheld the suspension as within the power of Congress under section 2 of the Fifteenth Amendment. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 333-34 (1966).

Congress was further concerned, however, that the mere suspension of existing tests would not prove sufficient to end the problems of discrimination that had existed for decades in the covered states such as Louisiana. Some of those states had in the past shown extraordinary ingenuity in contriving new laws and procedures to perpetuate voting discrimination, and Congress had reason to fear that those states might resort to similar maneuvers in the future. Under the compulsion of these unique circumstances, and unable to foresee every discriminatory contrivance which might in the future be concocted, Congress adopted section 5 of the Act. Section 5 requires that, prior to implementing any "voting qualification or prerequisite to voting, or

standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964," the State or subdivision involved must obtain a declaratory judgment in the United States District Court for the District of Columbia that the new practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. §1973c. Section 5 also establishes an alternative and more expeditious procedure for obtaining approval of the new law; the new law may be enforced if it is submitted to the Attorney General of the United States and, within 60 days of the submission, the Attorney General does not formally object to the new statute or regulation. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966); *Allen* v. *Board of Elections*, 393 U.S. 544, 548-49 (1968).

The subject of the instant action is Ordinance No. 5154 (hereinafter referred to as "Plan II"), which redistricts the City Council of the City of New Orleans. Plaintiffs submitted Plan II to the Attorney General in May, 1973; on July 9, 1973, the Attorney General interposed an objection to Plan II on the ground that plaintiffs had failed to establish that the plan would not have the effect of discriminating on the basis of race.[1] Thereafter plaintiffs commenced this action in the United States District Court for the District of Columbia, seeking a declaratory judgment that Plan II did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color. On March 15, 1974, the District Court concluded that Plan II would have such a discriminatory effect, and denied the declaratory judgment.[2] Having resolved the case on this basis, the District Court did not reach the question of whether Plan II also had a discriminatory purpose.[3]

[1] Appendix, pp. 33-35.

[2] Jurisdictional Statement, pp. 1a-74a.

I.

Plan II Would Have the Effect of Denying or Abridging the Right to Vote On Account of Race or Color.

1. The Legal Standards

The legislative history of section 5, particularly in connection with the renewal of the Voting Rights Act in 1970, makes clear the type of reapportionment with which Congress was concerned and which Congress adopted section 5 to stop—the division of a concentration of black voters among several districts in which the black voters were combined with a larger number of white voters. In 1968 the United States Civil Rights Commission reported to Congress that district lines were being drawn in this way in southern states to dilute the newly gained voting strength of Negroes.[4] In Alabama state legislative districts had been fashioned so that they "aggregated predominantly Negro counties with predominantly white counties," thus "preventing election of Negroes to House membership." In Mississippi the congressional district lines were drawn to divide the predominantly black Delta region among three districts with white majorities.[5] Senate and House seats were also redrawn in Mississippi.

> In several instances, the legislature combined counties in which Negroes constituted a majority of the population and a majority of the registered voters in legis-

[3] Jurisdictional Statement, pp. 40a-42a.

[4] United States Commission on Civil Rights, Political Participation, p. 177 (1968).

[5] *Id.*, p. 31.

> lative districts with counties having white population and voting majorities. For example, majority Negro Claiborne County was joined in a senatorial district with majority white Hinds County. Jefferson County, with a 70 percent Negro population and a Negro voting majority, was combined with Lincoln County, which has a population 69 percent white. In both cases the resulting district had a majority white population.[6]

The results of this 18 month Civil Rights Commission study were among the factors that induced Congress in 1970 to extend the Voting Rights Act. See 116 Cong. Rec. 5521, 5526 (1970).

Concern with this problem was voiced throughout the legislative process in 1970. At the House hearings Mr. Glickstein of the Civil Rights Commission testified,

> The history of white domination in the South has been one of adaptiveness, and the passage of the Voting Rights Act and the increased black registration that followed has resulted in new methods to maintain white control of the political process. . . .
>
> For example, State legislatures [have redrawn] the lines of districts to divide concentrations of Negro voting strength.[7]

Congressman McCulloch expressed a similar concern with the alteration of district lines.[8] During the Senate hearings Mrs. Freeman testified for the Commission that legislatures had done what they could to make black votes "worth little" by drawing "lines of legislative districts

[6] *Id.*, p. 34-35.

[7] Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 4249, 91st Cong., 1st Sess., p. 17 (1969).

[8] *Id.*, p. 3.

to divide concentrations of Negro voting strength." [9] Other witnesses testified to the use of this device as well as related practices such as use of multi-member districts.[10] During the House and Senate debates repeated concern was expressed that the value of minority votes would be diluted by submerging them in districts with white majorities.[11]

The need to apply section 5 to reapportionment cases was particularly great because, as the Civil Rights Commission pointed out, constitutional attacks on these efforts to dilute black votes had been largely unsuccessful.[12] Although this Court held open the possibility that multimember districts might not be invulnerable to judicial scrutiny, this Court rejected all such challenges prior to 1973. See *Whitcomb* v. *Chavis*, 403 U.S. 124 (1974); *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967); *Fortson* v. *Dorsey*, 379 U.S. 433 (1965). A similar device, the annexation of white suburbs to a city with a large minority population, was upheld in *Burnette* v. *Davis*, 382 U.S. 42 (1965), *affirming Mann* v. *Davis*, 245 F. Supp. 241 (E.D. Va. 1965). The possibility of a judicial challenge to gerrymandering of district lines, first raised in this Court in *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), was complicated if not dimmed by a later decision laying great emphasis on proof of discriminatory motives. *Wright* v. *Rockefeller*, 376 U.S. 52 (1964).

[9] Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Bills to Amend the Voting Rights Act, 91st Cong., 1st and 2d Sess., p. 47 (1969-70).

[10] *Id.*, pp. 195-96, 469 (Efforts to frustrate the Act include "redistricting to nullify local black majorities.")

[11] 115 Cong. Rec. 38486 (Remarks of Rep. McCulloch); 116 Cong. Rec. 5520-21 (Remarks of Senator Scott), 5527 (Remarks of Senator Scott), 6168 (Remarks of Senator Scott), 6358 (Remarks of Senator Bayh) (1970).

[12] Political Participation, p. 35, n.63.

The Commission noted with particular concern the judicial treatment of constitutional challenges to certain Mississippi redistricting which the Commission believed was adopted for the express purpose of diluting black votes and evading the Voting Rights Act. The challenge to the gerrymandering of congressional lines was summarily rejected on the ground that the black plaintiffs had to prove discriminatory purpose, and could not do so merely by offering newspaper reports of statements made by the relevant legislators. *Connor* v. *Johnson*, 11 Race Rel. Rep. 1859, 1863 (S.D. Miss. 1966). A challenge to the gerrymandered legislative districts was summarily rejected when the district court refused to even consider the racial composition of the new districts. *Connor* v. *Johnson*, 265 F. Supp. 492, 498-99 (S.D. Miss. 1967), *aff'd* 386 U.S. 483 (1967). Although all of these districting changes had survived constitutional challenges, none had ever been submitted for approval under section 5. The Commission called on the Attorney General to take steps, especially with regard to Mississippi, to enforce section 5 as it applied, *inter alia*, to changes in election districts.[13] During the 1969-70 hearings on renewal of the Voting Rights Act, the Attorney General repeatedly testified that a ban on any discriminatory "purpose or effect" was broader than the unelaborated constitutional prohibition.[14] The Assistant Attorney General in charge of the Civil Rights Division told the Senate Committee, "[T]he real innovation about section 5 . . . was that it contained language that changes with discrimi-

[13] Political Participation, p. 184. The failure of the Attorney General to take steps to enforce section 5 in similar circumstances was discussed in *Perkins* v. *Matthews*, 400 U.S. 379 (1971).

[14] Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 4249, 91st Cong., 1st Sess., p. 280 (1969); Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Bills to Amend the Voting Rights Act, 91st Cong., 1st and 2d Sess., pp. 189-190 (1969-70).

natory effect were in violation of the law. Most of us used to assume, and the courts, I think, pretty well held, that if you were to attack a State law as being in violation of the 15th Amendment, you would need to prove that there was a discriminatory legislative purpose."[15] Thus the Commission concluded that the application of section 5 was necessary to stop redistricting practices which could not be dealt with effectively through ordinary litigation.

In the years immediately preceding and following the enactment of the Voting Rights Act, the principle tactics used to prevent black participation in the political process were direct obstacles to registration and voting. More recently, however, the fashioning of district lines and multimember districts to dilute the effectiveness of minority votes have become the "prime weapons" of those seeking to frustrate the purposes of the Act. *Perkins* v. *Matthews*, 400 U.S. 379 (1971). In January, 1975, the Civil Rights Commission reported that

> The most serious problem for minority voters now is practices which dilute the minority vote. The greatest use of section 5 has been in preventing such practices.[16]

Between 1971 and 1974 the Attorney General interposed objections to 51 different redistricting plans in six states involving congressional, legislative, county supervisors, police jury, school board, parish council, and city council districts.[17] In objecting to these plans under Section 5 the

[15] Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Bills to Amend the Voting Rights Act, 91st Cong., 1st and 2d Sess., p. 507 (1969-70).

[16] The Voting Rights Act: Ten Years After, p. 345.

[17] *Id.*, pp. 400-409; David H. Hunter, Federal Review of Voting Charges: How to Use Section 5 of the Voting Rights Act, pp. 90-97 (1974).

Attorney General used the same standard applied in the instant case—that district lines must not be drawn in such a way as to divide up a concentration of minority voters and submerge the fragments of that concentration in districts with larger numbers of white voters.[18]

This construction of Section 5, fashioned by the Attorney General in a series of cases to assure that districting plans would not have a discriminatory effect, should be accorded the deference due "to the interpretation given the statute by the officers or agency charged with its administration." *Perkins* v. *Matthews*, 400 U.S. 379, 391 (1971). Such deference is particularly appropriate in the instant case, since Congress is at this very moment considering a ten year extension of the Voting Rights Act so as to apply the estab-

[18] United States Commission on Civil Rights, the Voting Rights Act: Ten Years After, pp. 204-327 (1975).

In opposing the district lines which were the subject of *United States* v. *Georgia*, 411 U.S. 526 (1973), the Attorney General noted that eight Georgia counties "form a contiguous group—of 89,626 persons, of whom 57.2 percent are nonwhite—enough to form at least three new majority-nonwhite single-member districts. Yet the submitted plan has only one district in the area with a slight nonwhite population majority (50.56 percent)—new District 59. The other new districts (60, 63, 64, 76 and 78) are 'border districts' partly inside and partly outside the majority-nonwhite area and have significant, but minority, nonwhite population percentages. These demographic facts . . . do not permit us to conclude, as we must under the Voting Rights Act, that this plan does not have a discriminatory racial effect on voting". Appendix, No. 72-75, pp. 11-12.

In 1971 the Attorney General opposed the lines defining the supervisors' districts in Yazoo County, Mississippi because "the district boundary lines within the City of Yazoo unnecessarily divide the black residential areas into each of the five districts." Letter of David Norman to Griffin Norquist, July 19, 1971, annexed to Brief Amicus Curiae of the NAACP in *United States* v. *Georgia*, No. 72-75, p. A-3. See also Letter of David Norman to Jack P. F. Gremillion, August 20, 1971, pp. A-5 to A-10; Letter of David Norman to Thomas Watkins, July 14, 1971, pp. A-13 to A-15.

lished standards to the redistricting that will follow the 1980 census.[19]

Plaintiffs suggest that the District Court was obligated to uphold Plan II unless it affirmatively concluded that that plan violated the Fourteenth or Fifteenth Amendment. But Section 5 neither requires nor entails such a constitutional inquiry. In adopting Section 5 Congress chose to establish what it believed to be a clear and effective test by which new election laws would be measured, in order to insure that the right to vote was not denied or abridged on account of race. Whether that test is characterized as merely mandating an inference of unconstitutional gerrymandering from a plaintiff's failure to prove the absence of discriminatory purpose and effect, or as establishing a new substantive rule forbidding district plans otherwise permissible under the Constitution, Congress' power to enact Section 5 is beyond dispute. *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). Whatever may be the functional or substantive relationship between the standards applied in section 5 case and in an ordinary challenge to the constitutionality of a statute, it is the former which apply in the instant case.[20]

[19] United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, p. 345 (1975); Hearings on H.R. 939 Before a Subcommittee of the House Judiciary Committee, 94th Cong., 1st Sess., p. —— (1975) (Remarks of Rep. Rodino).

[20] The resolution of this case does not require a delineation of the precise differences and similarities between these standards. Were this a constitutional challenge to the creation of a multimember district, judicial inquiry might be appropriate into such diverse and troublesome questions as whether blacks had sufficiently distinct interests as to make separate representation important, whether white councilmen had in the past been indifferent to those interests and whether blacks would be better off as a majority of a few districts or a substantial minority of a larger number of districts. *White* v. *Regester*, 412 U.S. 755 (1973). As to minority voters in the states and subdivisions covered by Section 5, Congress, drawing on its unique expertise and experience, has resolved these

Appellants ask this Court to overturn the established construction of Section 5, claiming that it requires "maximization" of black voting strength[21] and urging that the District Court was obligated to approve any districting plan with a "rational basis".[22] The District Court opinion, like section 5, does not require the creation of the maximum feasible number of majority black districts;[23] they merely forbid the systematic dismemberment of black concentrations. Doubtless adherence to this statutory standard will, in the instant case, result in at least two districts with substantial majorities of black voters,[24] but such a consequence is neither undesirable nor unforseen. Insofar as redistricting is concerned, Congress enacted section 5, not to improve the geometric aesthetics of districting maps, but because Congress knew—as did the draftsmen of Plan II—that the consolidation or division of a concentration of black voters would directly effect whether blacks from a majority of one or more districts and whether black candidates can be elected.[25]

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questions in favor of creating districts in which black majorities can elect black candidates. Although circumstances will at times require the courts to determine such difficult political and sociological questions, a congressional resolution is certainly to be welcomed. *Compare Wright* v. *Rockefeller*, 376 U.S. 52, 57-58 (1964), with *Taylor* v. *McKeithen*, 499 F.2d 893 (5th Cir. 1974).

[21] Brief for Appellants, p. 31.

[22] Brief for Appellants, pp. 19-26.

[23] Since blacks are now 38.2% of the voters in New Orleans, it would probably be possible to draw district lines such that 3 out of 5, or 4 out of 7, districts would have black majorities.

[24] See Appendix, p. 626.

[25] Consolidation will also affect the number of votes "diluted." Under Plan II, even treating District B as predominantly black, there are 62,612 black voters in overwhelmingly white districts, compared to only 18,694 white voters in a single marginal black district. Appendix, p. 524. Under the Republican proposal there would be 34,376 black voters in predominantly white districts and 28,384 white voters in predominantly black districts. Appendix, p. 626.

Nothing in Section 5 or its legislative history would require, or even permit, the Attorney General or a district court to approve a voting change merely because it had a "rational" or even "compelling" basis. The statute contains no express or tacit suggestion that the discriminatory purpose or effect of a proposed change can be overcome by a showing of some additional basis or effect of the change, rational, compelling, or otherwise. Nor does the statute distinguish between reapportionment and other voting changes. Few alterations in election laws and procedure, particularly in the area of reapportionment,[26] are so bizarre that some rational basis for them cannot be conjured up by a competent attorney; to require approval of a discriminatory change because there was such a rational basis would render section 5 a dead letter.[27] See *Wright* v. *Council of City of Emporia*, 407 U.S. 451, 462, 467-68 (1972). Once it found that Plan II had the proscribed discriminatory effect, the District Court's inquiry properly came to an end.

In light of the purpose and legislative history of section 5, plaintiffs were required to establish either that there was no concentration of black voters in New Orleans or that any such concentration or concentrations had not been divided among predominantly white districts.

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[26] The various considerations bearing on reapportionment are so diverse, and often inconsistent, as to afford a "basis" for virtually any plan: compactness, continuity, respecting natural and man made banners (which usually run in all directions), creating heterogeneous district to avoid legislators favoring special interests (or creating homogenous districts to achieve the opposite effect), dividing up black communities so they can influence several legislators (or consolidating those communities so they have more control over a smaller number of officials), avoiding "inadequate" representation for a particular group (the choice of group controlling the districting pattern), etc.

[27] This Court rejected a similar contention in *City of Petersburg, Virginia* v. *United States*, 410 U.S. 962 (1973); Jurisdictional Statement in No. 74-865, p. 12.

2. The Effect of Plan II

The District Court correctly concluded that the plaintiffs had failed to establish that Plan II would not dilute the votes of black voters. The court found that black voters were concentrated in a east-west belt running through New Orleans, that that concentration was divided among five different districts and combined with large numbers of white voters, and that bloc voting by whites rendered unlikely if not impossible the election of black candidates from at least four of the districts. These findings of fact were supported by the record, and plaintiffs do not challenge their correctness on appeal.

Racial discrimination in voting was for years prior to the Voting Rights Act a serious problem in Louisiana.[28] When Reconstruction ended in Louisiana there were substantially more blacks registered to vote than whites, but by 1910 blacks accounted for less than the 1% of the state registration.[29] The principle device for limiting the franchise to whites was a literacy test adopted in 1898 for the express purpose of discriminating against blacks.[30] After the Second World War black registration began to rise, a pattern accelerated by this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). In the late 1950's a program of concerted activities was undertaken by the Louisiana Legislature, the State Board of Registration, the State Attorney General and the Association of Citizens Councils of Louisiana to prevent further minority registration and to remove blacks from the existing rolls.[31] A series

[28] See generally Hearings in Louisiana Before the U.S. Commission on Civil Rights (48).

[29] 1961 United States Commission on Civil Rights Report: Voting, pp. 40-41.

[30] See Official Journal of the Constitutional Convention of the State of Louisiana 1898, *passim*.

[31] 1961 United States Commission on Civil Rights Report: Voting, 43-48.

of civil actions prosecuted by the United States failed to bring an end to this active discrimination. See e.g. *United States* v. *McElveen*, 177 F. Supp. 355, 180 F. Supp. 10, 11 (E.D. La. 1960), *aff'd sub nom., United States* v. *Thomas*, 362 U.S. 58 (1960); *United States* v. *Association of Citizens Councils of Louisiana*, 187 F. Supp. 846 (W.D. La. 1960); *United States* v. *Louisiana*, 380 U.S. 145, 148-49 (1965).

The passage of the Voting Rights Act brought a dramatic change in black registration. In 1964 only 28.4% of eligible blacks were registered in New Orleans, accounting for barely 17% of the registered voters.[32] During the following three years over 24,000 blacks registered to vote, raising black registration to 25.1% of the total.[33] By May 1973 34.5% of the registered voters were black.[34] In the year between May 1972 and May 1973 minority registration rose by 2,512, while white registration actually declined by 4,895.[35] As of October, 1974, 38.2% of those voters were black.[36] New Orleans thus presents precisely the situation in which Congress feared district lines would be drawn so as to divide concentrations of black voters and thus dilute the value of their vote.

The District Court correctly determined that the black community was concentrated in the manner with which Congress was concerned.

Although some black families are to be found in most of the principal areas of New Orleans, there is no

[32] 1961 United States Commission on Civil Rights Report: Voting, p. 267.

[33] Political Participation, A Report of the United States Commission on Civil Rights (1968), p. 241.

[34] Appendix, p. 623.

[35] *Compare id.* 622 *with id.* 623.

[36] United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, p. 368.

> general geographical blending of black and white residences. The black population is heavily concentrated in a series of neighborhoods extending eastwardly and westwardly through the central part of the City; the areas lying north and south of this belt, with minor exceptions, are overwhelmingly white.[37]

Plaintiffs do not question the correctness of this finding, which is fully supported by the record. The vast majority of black voters live in a belt approximately a mile wide running the length of the city from east to west; one can traverse the city from St. Jefferson Parish eight miles to St. Bernard Parish without crossing more than one or two white precincts.[38] This black concentration is separated from the predominantly white parts of New Orleans by a variety of man made barriers, including interstate highways,[39] limited access highways,[40] divided multi-lane main

[37] Jurisdictional Statement, p. 4a.

[38] See Appendix, p. 620. This map, based on 1971 figures substantially understates the size of the minority vote, Blacks constituted approximately 31% of the registered voters in 1971, compared to 38.2% of the voters in October, 1974.

[39] Interstate 10 separates the black Desire section (Ward 9, precincts 28, 28-A, 28-B, 28-C) from the white neighborhood to the north (Ward 9, precincts 29, 29-A, 30, 30-A, 31, 31-A), and the black portions of the central city (Ward 2, precincts 6, 6-A, 7; Ward 17, precincts 14 and 16) from the white neighborhood to the north (Ward 3, precincts 12, 15, 16, 18, 19, 20); Interstate 610 separates the black community east of Dillard University (Ward 7, precincts 27, 27-A, 27-B) from the white neighborhood north of the Fairgrounds Race Track (Ward 7, precincts 18 and 19).

[40] The Pontchartrain Parkway, U.S. 9, separates the black central city (Ward 2, precincts 1, 2, 3, 4) from the downtown business area (Ward 3, precinct 1).

thoroughfares,[41] cemeteries,[42] the Inner Harbor Canal[43] and City Park.[44] There are virtually no black voters in certain white parts of the city, including the northern third of the city[45] and the neighborhoods surrounding Loyola and Tulane Universities.[46]

The effect of Plan II, as Plan I before it, was to systematically dismember this concentration of black votes and to place fragments in each of 5 separate districts with larger

[41] St. Claude Avenue separates the black areas to the north (Ward 9, precincts 2, 3, 3-A, 3-B, 4, 5, 5-A, 6, 6-A, 6-B, 8, 22, 23, 24, 25, 25-A, 26, 27) from the white river front (Ward 9, precincts 1, 1-A, 7, 9, 11, 12, 13, 14, 15, 16); Florida Avenue separates those same black areas from the white community north of the Avenue and east of the Intercoastal Waterway (Ward 9, precinct 32), and falls between the black southern portions of Wards 7 and 8 (Ward 7, precinct 8, 9, 9-A, 20, 20-A, 21; Ward 8, precincts 11 and 12) and the white portions of those wards to the north; St. Charles Avenue separates the black central city (Ward 1, precincts 5, 6, 7; Ward 10, precincts 10-H; Ward 11, precincts 10-19; Ward 12, precincts 11, 12, 13) from the white riverfront area to the south (Ward 1, precincts 1-4; Ward 10, precincts 1-9; Ward 11, precincts 1-9, Ward 12, precincts 1-8.)

[42] The Metairie and Greenwood Cemeteries separate the black neighborhood to the south (Ward 17, precincts 13, 13-A, 14, 15, 16) from the white neighborhoods to the north (Ward 17, precincts 18-21).

[43] The Canal separates the black Desire section (Ward 9, precincts 28, 28-A, 28-B, 28-C) from the white area to the east (Ward 9, precinct 32) and separates the black development at Pontchartrain Park (Ward 9, precincts 31-B, 31-C, 31-D and 31-E) from the white area to the east (Ward 9, precincts 33, 42, 42.)

[44] The Park separates the black community near Dillard University (Ward 7, precincts 27-A, 27-B, 26-A, 27, 28, 28-A) from the white portions of Ward 5 across the Park.

[45] Excepting small black communities near Dillard University, a predominantly black college, and near Pontchartrain Park, until recent times the park used by blacks who were excluded because of their race from City Park.

[46] The Director of the City Council Staff which prepared Plan II acknowledged the existence of these black and white concentrations. Appendix, p. 238.

numbers of whites. The black neighborhood north west of the French Quarter immediately adjoins even larger black areas to the east and west; in District C, however, that neighborhood is paired with the all-white neighborhoods of Lake Vista, 5 miles to the north across City Park, and Aurora Gardens, 5 miles to the south across the Mississippi River. The black voters in the southern portions of wards 7 and 8 are combined, not with their black neighbors in Wards 6 and 9, but with the white residential area on the shore of Lake Pontchartrain 3 miles to the north. The black community concentrated between Florida and St. Claude Avenues is divided betwen Districts D and E, each of which has a larger number of white voters. The black community along the Jefferson Parish line is separated from the nearby central city neighborhoods, and combined instead with white West End area miles to the north and the Tulane area miles to the south.[47] With one exception, the districts are long and thin, crossing natural and man-made boundaries to pair fragments of black concentration with larger but distant white areas; District C is a mile wide and 12 miles long.

Had the district lines been drawn to reflect the natural and man-made boundaries which separate the black concentration from the rest of the city, or had the districts merely been reasonably compact, two or more districts with a substantial majority of black voters would have resulted. The Republican plan, for example, resulted in two districts with black majorities in excess of 60%.[48] Instead, Plan II carefully divided that black community among the five city council districts, none receiving more than 21,000 or less than 11,000 minority voters. Thus, the 83,588 black voters concentrated in the center of New Orleans were divided so

[47] See Appendix, p. 638.

[48] Appendix, p. 626.

that—at the time Plan II was drawn up—every district had a white majority. After the preparation of Plan II, and before the decision below, a significant rise in black registration raised the number of black voters in District B to 52.6%.[49] The next largest concentration of black voters is in District E, which not coincidentally has the fastest growing white population in the city.[50] Given the obstacles posed by the high concentration of black voters and the geography of New Orleans, it would be difficult to design a districting plan better suited to avoiding a substantial black majority in any one district and thus preventing the election of a black candidate.[51]

The District Court correctly concluded that the diluting effect of Plan II was aggravated by a history of bloc voting substantially along racial lines.[52] Three of the plaintiff councilmen conceded there was such bloc voting in New Orleans,[53] and two of defendants' witnesses confirmed the existence of this problem.[54] Although a black candidate

[49] Appendix, p. 624. Plan II was prepared in 1972 while Plan I was still under consideration by the Attorney General. *Id.*, pp. 350-51. Between May, 1972 and May, 1973, black registration rose from 79,213 to 83,588, an increase of 5.5%. But for this increase blacks would have constituted only 49.8% of District B.

[50] Appendix, p. 187.

[51] The effect of Plan I may have been slightly worse, but this was accomplished by making 3 of the 5 districts non-continuous. Appendix, p. 623.

Plaintiffs do not deny that it would be entirely feasible to fashion a compact districting plan that did not divide the black community among white districts. Nor does such a claim appear to have been raised in any of the other 50 cases in which the Attorney General objected to a redistricting plan. The existence of a concentration of black voters guarantees *ipso facto* that a non-dilutive districting plan can be drawn which is compact, contiguous, and consistent with *Reynolds* v. *Sims*, 377 U.S. 533 (1964).

[52] Jurisdictional Statement, pp. 18a-19a.

[53] Appendix, pp. 260, 506-07, 545-46, 548.

[54] *Id.*, pp. 414, 547; see also Exhibits 29, 30, 33.

running against several whites in a primary might obtain a plurality in a majority white district, state law requires that the nominee obtain a majority and mandates a second primary where necessary. La. Rev. Stat., Art. 18, § 358 (1966 Supp.). On several occasions blacks have won such pluralities, only to lose the runoff election to a white candidate due to white bloc voting.[55] Although the Democratic nomination is usually tantamount to election, on at least one occasion a black Democratic candidate so nominated was defeated when white traditionally Democratic wards voted in favor of a white Republican. Until restrained from doing so by this Court, Louisiana in the past encouraged such bloc voting by printing on the ballot the race of each candidate. *Anderson* v. *Martin*, 375 U.S. 399 (1964).

Plaintiffs object that, in considering whether Plan II had a discriminatory effect, the District Court was obligated to ignore the fact that 2 of the 7 Council members were to be chosen through an at-large election which, particularly in view of the majority runoff and anti-single shot laws, guaranteed the defeat of any black candidate.[56] They also suggest that, in assessing the impact of Plan II, the District Court should have disregarded the "social, economic and political context" in which it operated.[57] The effect of a proposed statute, however, cannot be assessed in the abstract; it depends on the particular circumstances, legal and otherwise, in which it is applied. The Assistant Attorney General advised Congress in 1970 that any judgment on boundary changes would require demographic or other

[55] Appendix, pp. 501, 564-6, 569; Jurisdictional Statement, pp. 19a, 64a; see also *Anderson* v. *Martin*, 375 U.S. 399, 401 (1964).

[56] Brief for Appellants, pp. 10-12.

[57] Brief for Appellants, p. 16.

information.[58] A similar argument was rejected by this Court in *City of Petersburg* v. *United States*, 410 U.S. 962 (1973)[59] and *United States* v. *Georgia*, 411 U.S. 526 (1973).[60] The Attorney General's regulations regarding Section 5 submissions have long required the submission of extensive information on the background and impact of any submission, especially when redistricting is involved. 28 C.F.R. § 51.10. The District Court, by detailing the legal and factual context which led it to reject Plan II, provided guidance to the City Council in fashioning a method of electing the Council which would be consistent with section 5.[61]

The Fifteenth Amendment does not require that every racial minority must in all cases be represented by a proportionate number of councilmen or legislators. But neither does the Constitution afford any protection to a districting plan well calculated to prevent minority repre-

[58] Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Bills to Amend the Voting Rights Act, 91st Cong., 1st and 2nd Sess., p. 507 (1969-70).

[59] The City, which wished to annex a predominantly white suburb, unsuccessfully urged that the District Court which disapproved that annexation under section 5 had erred when it took into consideration the fact that the Petersburg City Council was chosen at large. Jurisdictional Statement, No. 74-865, pp. 13 et seq.

[60] Georgia urged that the Attorney General had erred when, in assessing the effect of its reapportionment plan, he considered the impact of the state's multimember district and majority runoff laws. See Brief for Appellants, No. 72-75, pp. 25-30. This Court held that the Attorney General's inquiry was so limited, "Section 5 is not concerned with a simple inventory of voting procedures, but rather with the realty of changed practices as they affect Negro voters." 411 U.S. at 531.

[61] In *City of Petersburg, supra*, the District Court advised the plaintiffs that the annexation, though discriminatory under the then existing circumstances, would pass muster under section 5 if the at-large method of election were replaced by districts. 354 F.Supp. 1021, 1031 (D.D.C., 1972), *aff'd* 410 U.S. 962 (1973).

sentation, or to insure no more than token representation in a city where blacks are close to a majority of the population. In the instant case, although blacks constituted 45.0% of the population and 38.2% of the registered voters, section 5 could not assure that ordinary "political defeat at the polls" would not prevent the election of a substantial number of blacks to the New Orleans City Council. *Whitcomb* v. *Chavis*, 403 U.S. 124, 153 (1971). Plan II, however, as the District Court noted, did more than subject black candidates to the everyday risks of the political process; it harnessed the established pattern of white bloc voting to create an insurmountable obstacle to the election of more than a single black.

II.

Plaintiffs Failed to Prove That Plan II Did Not Have the Purpose of Denying or Abridging the Right to Vote on Account of Race.

Section 5 requires plaintiffs to establish not only that Plan II would not have a discriminatory effect, but also that it did not have a discriminatory purpose. In the instant case the District Court did not reach the latter issue, since it ruled for defendants on the former.[62] It is clear, however, that plaintiffs failed to meet their burden of proof with regard to the purpose of Plan II. This failure affords an alternative ground for affirming the decision of the District Court.

Plan II was not the first districting proposal submitted by the City Council. On March 2, 1972 the Council adopted Ordinance 4796, (hereinafter referred to as "Plan I"), providing for the redistricting of the New Orleans City

[62] Jurisdictional Statement, pp. 40a-42a.

Council. On January 15, 1973, the Attorney General objected to Plan I. In his letter of that date, the Assistant Attorney General spelled out the basis for the objection so as to make clear what steps were needed to fashion a non-discriminatory plan:

> Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts.[63]

Plaintiffs do not question the correctness of the Attorney General's decision regarding Plan I. Four months after the rejection of Plan I the City Council, on May 13, 1973, adopted Plan II. The controlling question is whether, as plaintiffs claim, Plan II represented a good faith attempt to remedy the defects in Plan I.

The most striking evidence in this regard is that Plan II did not alter in any significant way the defects in Plan I. The boundaries of Districts D and E were identical in both plans.[64] The total number of black voters in District B rose from 20,012 to 20,976, an increase of 964, but much of this change was attributable to the increase in minority registration between 1972 and 1973.[65] White registration in District B fell, but this too was due in large measure to a decline in white registration in City as a whole. The only significant effect of Plan II, outside of the Algiers area, was to move District B to the northeast, adding to it several thousand black voters in Wards 2 and 3 and removing from it an almost equal number in Ward 13. This

[63] Appendix, p. 29.

[64] Compare Appendix, p. 27 *with* p. 31.

[65] Appendix, pp. 623-624. The total number of registered blacks in Districts A, B and C rose from 44,253 on May 4, 1972 to 45,546 on May 9, 1973, an increase of 1,023.

worked a net transfer of approximately 1,000 black voters from District C to District A, a change of no practical significance since both districts remained at least 75% white. In Plan II blacks continued to be divided among the five districts, and in virtually the same proportions as before.[66] The dilution worked by Plan I was carried forward virtually unchanged by Plan II.

The reason why Plan II failed to remedy the defects noted by the Attorney General is also clear from the record. The member of the Council staff who prepared Plan II conceded that plan had been drawn up *before* Plan I was rejected,[67] and the Director of the Council staff testified that in preparing Plan II it was the staff's desire to leave "undisturbed the general racial composition of the districts".[68] The bill containing Plan II recites that it was introduced by one of the councilmen on December 7, 1972, a month prior to the Attorney General's decision. Plan II was drawn up by the Council staff, not as a result of the Attorney General's decision, but because of complaints from the residents of the predominantly white Algiers section, who objected to being divided among three different council districts and paired in part with District A, whose residents had a conflicting attitude regarding proposals for a new bridge across the Mississippi.[69] The changes worked by Plan II on the borders of Districts A, B and C were "a result of" the decision to consolidate the fragments of Algiers and place them in District C,[70] not of any desire to remedy the defects of Plan I.

[66] The proportion of New Orleans' black voters in each of the districts under Plans I and II was as follows:

	Plan I	*Plan II*
District A	14.59%	15.50%
District B	25.26%	25.09%
District C	16.01%	13.88%
District D	21.24%	21.89%
District E	22.89%	23.71%

[67] Appendix, pp. 350-51, 354.

[68] *Id.*, p. 213.

[69] *Id.*, pp. 112, 197.

[70] *Id.*, p. 223.

The reasons why the Council put forward Plan II, which it must have known to be inadequate, rather than attempting to draw up a new non-discriminatory plan, are not hard to devine. The councilmen who voted for Plan II had more than a casual interest in preventing the election of blacks, for any such election would cost one of the incumbents his seat. The potential for abuse inherent in this situation was compounded by the fact that each councilman drew the lines of his own district in consultation with the incumbent in the neighboring district.[71] Although at-large Councilman Moreau, the ostensible author of both plans, insisted he took no interest in the racial composition of the districts,[72] the councilmen whose districts were at stake asked for and were given racial breakdowns on the various options before the plans were finally drafted.[73]

Over and above the danger of defeat by a black candidate, there was another reason why the Council was unwilling to take the steps necessary to remedy the defects in Plan I. With a single exception, all the members of the Council lived in the white lake-front area in the north end of the city.[74] Any meaningful solution to the failings of Plan I would have required the council districts to run from east

[71] *Id.*, p. 339.

[72] *Id.*, pp. 269-279.

[73] *Id.*, pp. 144-45, 208, 339.

[74] *Id.*, pp. 125, 232, 235.

to west rather than north to south, which would have placed several incumbent councilmen in the same lake-front district. Despite some equivocation by plaintiffs' witnesses, it was clear that the Council had no intention of considering a plan that placed incumbents in the same district, and that th Council staff so understood.[75]

Nor is there any suggestion in the record that the Council or its staff did not understand that federal law forbade fragmentation of the black community so as to dilute minority voting strength. The record is replete with evidence that they fully comprehended what was required of them.[76] The lame excuses offered for their failure to do so are unpersuasive.[77] The conclusion is inescapable that the members of the City Council failed to remedy the defects in Plan I, not through inadvertance, nor through blind adherence to any lofty neutral principles, but because they were unwilling to give up the practical political benefits conferred on them by continued dilution of black voting strength.

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[75] *Id.*, pp. 120-21, 146, 148-50, 152, 192, 214, 229, 230, 232, 235, 297, 337, 344, 547, 571, 575, 580.

[76] *Id.*, pp. 176, 195, 206, 245, 263, 265, 333, 352, 541.

[77] One witness said the north-south districts were fashioned to conform to the natural boundaries of the city, but virtually all the boundaries he listed served not as the boundaries of the districts but as internal barriers. *Id.* p. 185-87. Several witnesses insisted it would be impossible to draw east-west districts without disrupting existing precincts, *id.* pp. 187, 200, 326, 514, but in view of the fact there were over 400 precincts it was conceded that the only east-west plan proposed had not had this effect. *Id.* pp. 199, 575.

CONCLUSION

For the above reasons the judgment of the District Court should be affirmed.

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No. 73-1869

In the Supreme Court of the United States

OCTOBER TERM, 1974

PETER H. BEER, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the district court (J.S. App. 1a–72a) is reported at 374 F. Supp. 363.

JURISDICTION

The judgment of the district court (J.S. App. 73a–74a) was entered on March 15, 1974. A notice of appeal (J.S. App. 75a–76a) was filed on April 5, 1974. This Court noted probable jurisdiction on October 15, 1974.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifteenth Amendment to the United States Constitution provides as follows:

> Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, provides in pertinent part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) [of this title] * * * are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color * * *.

QUESTION PRESENTED

Whether the district court properly determined that appellants had failed to establish that a redistricting plan proposed for councilmanic elections in the City of New Orleans, Louisiana, will not have the effect of denying or abridging the right to vote on account of race or color.

STATEMENT

This is an appeal from the denial by the district court of a declaratory judgment sought by members

of the City Council of New Orleans, Louisiana, pursuant to Section 5 of the Voting Rights Act of 1965, *supra,* to permit implementation of a redistricting plan proposed by the City. The court denied the relief requested because it found that the redistricting would unlawfully dilute the voting capabilities of black voters.

The New Orleans City Council is a seven-member body, two of whom are elected at-large and five by single-member districts dividing the City (Pl. Ex. 4; New Orleans Charter, 3–102, 3–103).[1] On March 2, 1972, the Council, complying with a charter provision requiring the reapportionment of councilmanic districts following the decennial census of the United States, adopted Ordinance No. 4796 M.C.S. ("Plan I"), which redivided the city into five new councilmanic districts.[2]

Because Louisiana and its political subdivisions are covered by Sections 4 and 5 of the 1965 Voting Rights Act (see 30 Fed. Reg. 9897), a change in voting procedures such as that provided for in Plan I may not be implemented before it has been subjected to federal scrutiny (J.S. App. 30a). This may be accomplished in either of two ways: (1) the state or subdivision involved may institute an action for a declaratory judgment in the United States District Court for the

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[1] Plaintiff-Appellants' exhibits are cited as "Pl. Ex." and Defendant-Appellees' exhibits are cited as "Def. Ex."

[2] A map of the districts specified in Plan I appears at App. 623.

Under all of the redistricting plans considered by the Council, the election of two council members on an at-large basis would have been continued.

District of Columbia, and may implement the change in voting procedures if the court finds that the voting change "does not have the purpose and will not have the effect" of unlawfully denying or abridging voting rights; alternatively, (2) the state or subdivision may submit the proposed change to the Attorney General of the United States, and may implement such change if the Attorney General does not interpose an objection. If the Attorney General does object, the proposed change in voting procedures may still be made the subject of an action for a declaratory judgment in the United States District Court for the District of Columbia and implemented if ultimately declared to be lawful in purpose and effect. 42 U.S.C. 1973c.

In the present case, the City chose to submit Plan I to the Attorney General (J.S. App. 7a), rather than to bring an action for a declaratory judgment. By letter dated January 15, 1973, the Attorney General objected to that plan on several grounds, concluding that its proposed councilmanic districts (J.S. App. 7a, n. 26):

> are drawn in a manner which appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts.

On May 3, 1973, the City Council adopted Ordinance No. 5154 M.C.S. ("Plan II"), which is the subject of this litigation, and submitted the amended plan to the Attorney General. By letter dated July 9, 1973, the Attorney General also objected to Plan II, stating in part that the boundary lines specified in Plan II "appear to effect a dilution of black voting strength in the same manner as did the boundary lines pre-

scribed in [Plan I]" and noting that Plan II "combines a number of black voters with a larger number of white voters in four of the five [councilmanic] districts" (J.S. App. 9a–10a, n. 33). The Attorney General's letter of July 9, 1973, also specifically criticized the use of predominantly north-south districts in both plans that had been submitted (*id.* at 10a, n. 33):

> Our evaluation of Ordinance numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical [*i.e.*, north-south] shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east to west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and the south of the city resulting in districts with more white than black voters.

After receipt of this letter, six of the seven council members filed suit in the United States District Court for the District of Columbia, pursuant to the provisions of Section 5 of the Voting Rights Act (42 U.S.C. 1973c), seeking a declaratory judgment that Plan II neither has the purpose nor would have the effect of denying or abridging voting rights on the basis of race. A three-judge court was convened, as required by Section 5, and hearings were held on August 9–10 and October 17–18, 1973 (J.S. App. 12a–13a). On March 15, 1974, the district court denied appellants' request for a declaratory judgment per

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mitting implementation of Plan II (J.S. App. 1a–74a).[3]

After discussing the evolution of Plan II (J.S. App. 13a–22a) and the historical background of the Voting Rights Act in general and Sections 4 and 5 in particular (*id.* at 22a–37a), the district court made detailed findings concerning the prospective operation of Plan II on minority voting strength in New Orleans.[4] The court found that residential segregation by race still prevails in New Orleans and that New Orleans' black population is concentrated in an east-west belt through the center city, with contiguous white residential areas to the north and south (see App. 620). Consequently, the use of predominantly north-south redistricting lines such as those specified in Plan II tends to create voting districts controlled by white voters (J.S. App. 38a).[5]

[3] The district court had earlier denied a petition filed by several *amici*. *Beer* v. *United States*, 374 F. Supp. 357 (D.D.C.). The issue there raised by the *amici* is not encompassed in the present appeal.

[4] Appellants do not challenge the accuracy of these findings, contending instead that the court misconstrued the applicable law in denying their request for a declaratory judgment (*e.g.*, App. Br. 10–11, 31).

[5] At the hearing before the district court, the government introduced a map of the City showing the locations of registered voters by race (Def. Ex. 1) and an acetate overlay (Def. Ex. 5) showing the district boundaries of Plan II. Viewed together, these exhibits reveal that the north-south boundaries utilized in Plan II produce four districts into which the black population belt located in the center city would be divided, and that each of these districts also includes a portion of the white residential areas adjoining the river to the south and the lakefront to the north (App. 620). Indeed, the City official responsible for directing the drafting of reapportionment plans for the City acknowledged that vertical lines tend to create majority white voting districts (*id.* at 236).

In this context, the court examined the impact of Plan II on minority voting rights in the City, using as referents both the percentage of registered voters who are black and the percentage of black persons in the City's total population. The court found that the five single-member councilmanic voting districts proposed in Plan II would have the following racial characteristics (J.S. App. 39a; see also App. 624):

District	Population			Registered voters		
	Total	Black	Percent black	Total	Black	Percent black
A	117,901	36,665	29.1	57,387	12,964	22.6
B	118,678	76,109	64.1	39,870	20,976	52.6
C	119,023	42,651	35.8	49,756	11,606	23.3
D	118,337	51,447	43.5	49,505	18,223	36.8
E	119,532	60,437	50.6	45,898	19,819	43.2
Total	593,471	267,308	45.0	242,416	83,588	34.5

Thus, although black persons comprise 34.5 percent of the registered voters in New Orleans and 45.0 percent of the City's population, under Plan II they would represent a majority of the registered voters—and then by a slight margin—in only one of the City's five councilmanic districts.

In assessing the significance of these statistics, the court examined several aspects of the voting history and electoral process under which Plan II would operate. The court found that New Orleans is char-

acterized by racial bloc voting (*id.* at 18a–19a, 45a)[6] and that black candidates, in recent efforts for city-wide office, have been successful only where they "were recipients of support from white organizations or white candidates" (*id.* at 17a, footnotes omitted).

Moreover, the nomination process in New Orleans includes both a majority-vote requirement and an anti-singleshot limitation (J.S. App. 19a, 38a–39a). The former means that if a candidate, in any election involving more than two candidates, receives only a plurality, the top two candidates are required to run against each other for the nomination (*ibid.*). The anti-singleshot limitation makes impossible the concentration of minority-group votes in favor of a particular candidate in the at-large elections since all ballots containing votes for fewer than the total number of positions available are disqualified (J.S. App. 20a, 38a–39a). The court found that these features of the candidate-nomination process, when viewed in light of New Orleans' long history of racial bloc voting and racial discrimination generally, effectively preclude the election of black candidates in any councilmanic district in which black persons do not comprise the majority of the registered voters—and ensure that both of the at-large positions on the Council will be filled by white candidates (J.S. App. 66a).

[6] Evidence of racial bloc voting is found throughout the hearing record, in the form of statistics (see Def. Exs. 14, 28, 32, 33, 34) and direct testimony (see App. 545–546).

Accordingly, the district court concluded that under Plan II black persons in New Orleans could hope at most to elect one of the seven Council members (J.S. App. 46a, 54a). The court held that this result constituted a "drastic" dilution of the voting strength of black persons, whether viewed from the perspective of the percentage of all registered voters who are black or of the percentage of black persons in New Orleans' total population (J.S. App. 44a). Given the fact of racial bloc voting, black persons—who, as noted above, comprise 34.5 percent of the registered voters in New Orleans—could expect as a theoretical matter to elect between two and three Council members. Since black persons make up 45 percent of the City's total population, moreover, they could, if registered in proportions roughly similar to white persons, expect to elect between three and four council members (*id.* at 45a–47a).[7] The court found the under-registration of black persons in New Orleans to be attributable in large part to the City's long history of racial discrimination—in public schools, public assemblies, public recreational facilities, public transportation, housing, employment and, perhaps most importantly, voting (J.S. App. 16a–17a, 57a–62a).[8]

[7] But see n. 19, *infra*.

[8] The history of legislative efforts in Louisiana to keep black citizens away from the polls was discussed by this Court in *Louisiana* v. *United States*, 380 U.S. 145, 147–150. These efforts have included use of a grandfather clause, a so-called "interpretation test," enactment of a law limiting participation in primary elections to white citizens, and the use of a statewide system of committees—whose work was directed by a committee of the Louisiana Legislature known as the Segregation Com-

After thus finding that Plan II would dilute the voting strength of black persons, the district court considered the justifications offered by the City for the plan (J.S. App. 47a–53a).[9] The City's purported justifications included reliance on ward and precinct lines[10] and on natural and man-made boundaries, all of which, the City suggested, mandated the north-south direction of the district boundaries provided for in Plan II.[11] The court found that these justifications were not sufficient to warrant the dilutive effect of Plan II on the voting potential of black persons within the City (J.S. App. 51a).[12] In reaching this conclusion, the court stated that the City's purported justifications did not satisfy the compelling state interest standard—particularly since the "curtailment of the black vote [caused by the plan was] to considerably less than half of its potential, if indeed not a complete negation of its potential" and other redistricting schemes without such a drastic racial effect had not been demonstrated to be infeasible (J.S. App. 53a; 64a).[13] Alternatively, the court held that the City had not offered any justification for Plan II sufficiently substantial to justify "dilution of the vote * * * on the scale indicated here" (J.S. App. 53a).

mittee—dedicated to the preservation of white social and political supremacy. This history of voting discrimination is reflected here in the fact that no black person has ever been elected to the New Orleans City Council (J.S. App. 17a, 62a).

[9] Because of its finding that Plan II would have a racially discriminatory effect, the court did not reach the contention that the plan was also racially discriminatory in purpose (J.S. App. 40a–42a).

[10] Ward lines are historical boundaries no longer used as election boundaries for city officials. In addition, the court noted that because of "one-man, one-vote" requirements all parties had stipulated that ward lines could not be followed. For this and other reasons, the court discounted professed reliance on ward lines (J.S. App. 49a–50a, n. 219).

[11] The court specifically stated (J.S. App. 38a, n. 161) that it was not invalidating all plans drawn on a north-south basis, nor holding that only an east-west plan would satisfy Section 5. It was only speaking to, and rejecting, the specific plan before it.

[12] Contrary to appellants' assertion, the district court did not require that any reapportionment plan ensure "maximal potential black voting strength" (App. Br. 31). Rather, the court specifically noted that a minority group is not entitled to "'an apportionment structure designed to maximize its political advantage'" (J.S. App. 47a). The court did state, however, that racial minorities are entitled to protection against being "enveloped in a structure which will necessarily minimize [their] potential for meaningful access to the political process" (*ibid.*).

[13] The district court also noted that the continued existence of the two at-large seats, part of the New Orleans councilmanic arrangement since 1954, exacerbated the dilutive effect of Plan II. The court found that, given the history of racial bloc voting and the fact that black voters were in the minority citywide, the two at-large seats were "the expectancy of the white vote" (J.S. App. 66a). Appellants do not here contest this finding.

SUMMARY OF ARGUMENT

In considering appellants' request for a declaratory judgment to permit implementation of Plan II, the district court properly held that dilution of voting strength on a racial basis is encompassed within the "denying or abridging the right to vote" standard of Section 5 of the Voting Rights Act. The determination of whether a particular voting change would have such a proscribed effect necessarily involves, as recognized by the district court, an inquiry into the social and political context in which the plan would

operate and an ultimate assessment of the plan's impact on the access of minority-group members to the political process.

In applying these principles in the present case, the court found first that the councilmanic districts provided for in Plan II would put black voters in the minority in four of the five proposed councilmanic districts. The court further found that black-supported candidates, largely because of New Orleans' long history of racial bloc voting, could realistically hope to be elected to the Council only in the single district under the plan in which blacks would be a majority of the registered voters. Plan II would leave undisturbed the present arrangement of electing two council members on an at-large basis, and the court found that these two seats would remain "the expectancy" of white voters.

The court did not base its ultimate finding of the dilutive effect of Plan II solely upon a statistical assessment. Rather, the court considered a variety of obstacles to full participation by blacks in the political process in New Orleans and ultimately concluded, we submit correctly, that Plan II would result in a sufficiently severe dilution of the voting strength of black citizens in the City to require justification by the appellants.

The court then subjected the justifications for Plan II offered by the City to careful scrutiny, in light of the magnitude of the plan's dilutive effect. The court found that reasonable alternatives for redistricting that would not entail the substantial dilutive ef-

fect of Plan II would have equally satisfied the guidelines proposed by the City as justifications. In view of this and its other findings, which are fully supported by the evidence, the court's denial of a declaratory judgment approving Plan II was correct.

ARGUMENT

I

THE DISTRICT COURT PROPERLY DETERMINED THAT PLAN II WOULD SUBSTANTIALLY DILUTE THE VOTING STRENGTH AND POTENTIAL OF BLACK CITIZENS OF NEW ORLEANS

A. IN DETERMINING THE EFFECT OF PLAN II, THE COURT PROPERLY CONSIDERED THE PLAN'S DILUTIVE EFFECTS IN THE CONTEXT IN WHICH THE PLAN WOULD OPERATE

In analyzing the effect of Plan II, the district court first correctly recognized that "dilution" of the vote is encompassed within the "denying or abridging the right to vote" standard of Section 5 (*e.g.*, J.S. App. 33a–34a). As this Court stated in *Georgia* v. *United States*, 411 U.S. 526, in holding the Georgia reapportionment plan there at issue to be subject to Section 5 review, "the question * * * is whether such changes have the potential for diluting the value of the Negro vote and are within the definitional terms of § 5" (*id.* at 534), and the Court answered both parts of this question affirmatively (*id.* at 534, 535). Indeed, the Court has consistently held that Section 5 is concerned with changes in voting procedures that have the potential for "dilution of voting power." See *Perkins* v. *Matthews*, 400 U.S. 379, 390; *Fairley* v. *Patterson*,

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393 U.S. 544, 569. And there is indication that, in reenacting Section 5 in 1970 with the intention that it would apply to the redistricting changes to be necessitated by the combined effects of the 1970 census and this Court's reapportionment decisions, Congress was specifically concerned about the possibility that redistricting could be used as a means of diluting black voting strength.[14]

[14] As early as 1968 the United States Civil Rights Commission had reported to Congress, after an 18-month study of the operation of the Voting Rights Act, that "[i]n areas where [minority] registration has increased, we have moved into a new phase of the problem [of disenfranchisement]. Political boundaries have been changed in an effort to dilute the newly gained voting strength of Negroes." *Political Participation*, A Report of the United States Commission on Civil Rights, p. 177 (1968).

The Civil Rights Commission's finding concerning the prevalence of the use of redistricting measures to dilute black voting strength was prominently and repeatedly referred to during the Senate and House hearings held in 1969 and 1970 in connection with Congress' extension of the Voting Rights Act (*e.g.*, Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 4249, 5538, and Similar Proposals, 91st Cong., 1st Sess., pp. 3–4 (statement of Rep. McCulloch); *id.* at p. 17 (testimony of Howard Glickstein, Acting Staff Director, United States Commission on Civil Rights); *id.* at p. 150 (testimony of Thomas E. Harris, Associate General Counsel, AFL–CIO); Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Amendments to the Voting Rights Act of 1965, 91st Cong., 1st and 2d Sess., p. 47 (testimony of Frankie Freeman, Member, United States Commission on Civil Rights); *id.* at p. 132 (testimony of Joseph L. Rauh, Jr., General Counsel, Leadership Conference on Civil Rights); *id.* at p. 427 (statement of Howard Glickstein); *id.* at p. 518 (testimony of David Norman, Deputy Assistant Attorney General, Civil Rights Division, U.S. Dept. of Justice)). The connection between redistricting and the dilution of black voting strength was also discussed in both Houses during the floor debates preceding reenactment of the Voting Rights Act (*e.g.*, 115 Cong. Rec. 38486 (remarks of Rep. McCulloch); 116 Cong. Rec. 5520–5521, 5527 (statement of joint views of Senators Bayh, Burdick, Cook, Dodd, Fong, Hart, Kennedy, Mathias, Scott, Tydings); 116 Cong. Rec. 6358 (remarks of Senator Bayh)).

In determining the question of dilution, the district court in the present case explicitly recognized that a proposed change in voting procedures does not require justification merely because it does not maximize minority-group voting strength (J.S. App. 47a) and held that the governing standard is, instead, "equality of opportunity" under the plan (J.S. App. 37a)—the right of the group not to "be enveloped in a structure which will necessarily minimize its potential for meaningful access to the political process" (J.S. App. 47a). This Court adopted a similar standard in upholding a constitutional challenge to multi-member legislative districts because of their dilutive effects on minority voting potential in *White* v. *Regester*, 412 U.S. 755, 766, stating in the context of that constitutional case:

> The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice. *Whitcomb* v. *Chavis*, [403 U.S.] at 149–150.

Although this standard has thus far been utilized by this Court only in determining whether dilution was

caused by multimember districts, it was properly relied upon by the district court here (with due regard to the shift in the burden of proof in the present statutory context). As the Court of Appeals for the Fifth Circuit put it, in analyzing a constitutional challenge to a single-member district reapportionment plan (*Howard* v. *Adams County Board of Supervisors*, 453 F. 2d 455, 458, n. 2),

> [w]hile the "dilution" test developed in *Burns* [v. *Richardson*, 384 U.S. 73], and expanded in *Whitcomb*, is used in those cases to test the constitutionality of multimember district plans, we have no hesitation in applying that test as a measure of the constitutionality of reapportionment plans involving only single-member districts. In each instance, we are required to determine the same question, whether or not there has been an unconstitutional manipulation of electoral district boundaries so as to minimize or dilute the voting strength of a minority class or interest.[15]

Appellants appear to contend that the principles emanating from these constitutional decisions do not apply to the statutory review of changes in voting procedures under Section 5 (Br. 14–17). They argue that Section 5 review is, instead, limited to a determination of the effects of the proposed voting change "by itself," ignoring the "social, economic and political context" in which the plan will operate (Br. 16).

[15] See also *Robinson* v. *Commissioners Court of Anderson County*, 505 F. 2d 674 (C.A. 5); *Moore* v. *Leflore County Board of Election Commissioners*, 502 F. 2d 621, 624 (C.A. 5).

However, as this Court recognized in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308–315, the Voting Rights Act of 1965 was passed specifically to enforce the Fifteenth Amendment, on the basis of an informed congressional judgment that previous judicial and legislative efforts to secure Fifteenth Amendment rights had been insufficient. Section 5 "suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment." 383 U.S. at 334. And the granting of a declaratory judgment under Section 5 is, effectively, a determination that "continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment." *Id.* at 335.

Accordingly, the issuance of a declaratory judgment under Section 5 necessarily implicates constitutional standards.[16] A mere determination that any denial or abridgement of voting rights under the changed procedure would be no worse than that under the pre-

[16] Denial of a declaratory judgment, however, need not be based on a finding that the proposed plan would be unconstitutional since the burden of proof is on the State to show that its changed procedure meets the statutory requirements (see *Georgia* v. *United States*, *supra*, 411 U.S. at 538). Moreover, both the Attorney General and the Deputy Assistant Attorney General in charge of the Civil Rights Division testified during the 1970 hearings leading to the Act's reenactment that Section 5 also expands the substantive prohibition of the Fifteenth Amendment for prophylactic purposes. See Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 4249, 5538, and Similar Proposals, 91st. Cong., 1st. Sess., at p. 280; Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Amendments to the Voting Rights Act of 1965, 91st. Cong., 1st. and 2d Sess., at pp. 189–190, 240, 507, 536.

existing procedure obviously would not satisfy the congressional purpose to enforce the Fifteenth Amendment. What is required, instead, is a realistic inquiry into the effects the proposed plan would have in actual operation in order to determine that the statutory and constitutional rights are vindicated—the kind of inquiry sanctioned by this Court in *Whitcomb* v. *Chavis, supra,* and *White* v. *Regester, supra,* where, as here, dilution of voting strength was the issue.[17] Indeed, any lesser standard for granting a declaratory judgment under Section 5 would permit approval of new election procedures under that section which would be vulnerable to subsequent challenge under the Fifteenth Amendment—a result obviously contrary to the prophylactic purpose of Section 5. See *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 308, 309, 335, 337.

In short, "Section 5 is not concerned with a simple inventory of voting procedures, but rather with the reality of changed practices as they affect Negro voters." *Georgia* v. *United States, supra,* 411 U.S. at 531.[18]

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[17] *Whitcomb* and *White* are in this respect no more than a particular application of the principle that a statute racially neutral on its face may be challenged as racially discriminatory in application. See, *e.g.*, *Yick Wo v. Hopkins*, 118 U.S. 356.

[18] See, also, *Perkins* v. *Matthews*, 400 U.S. 379, 390; *Allen* v. *State Board of Elections*, 393 U.S. 544, 548; *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 308, 315; *City of Petersburg, Virginia* v. *United States*, 354 F. Supp. 1021, 1027 (D.D.C.), affirmed, 410 U.S. 962; cf. *Burns* v. *Richardson*, 384 U.S. 73, 83.

B. THE EVIDENCE SUPPORTED THE DISTRICT COURT'S FINDING THAT PLAN II WOULD SUBSTANTIALLY DILUTE THE VOTING STRENGTH AND POTENTIAL OF BLACK CITIZENS

The district court examined the probable effect of Plan II in light of the detailed evidence developed in the four-day hearing in this case. As a starting point, the court found that Plan II would fragment the black vote in New Orleans so that black persons would be in the majority, and then only slightly, in but one of the five proposed councilmanic districts (*e.g.*, J.S. App. 39a-40a). The court also found that New Orleans' long history of racial bloc voting, reinforced as late as 1964 by state legislation (see pp. 22–23, *infra*), and Louisiana's majority vote requirement would continue to operate as a practical matter to defeat black-supported candidates in any district in which blacks do not comprise a majority of the registered voters (J.S. App. 45a–46a). Under Plan II, then, at least four of the five redistricted council seats would be controlled by New Orleans' white majority (J.S. App. 46a). Moreover, the cumulative effect of racial bloc voting and the continued enforcement of majority-vote requirements and an anti-single-shot limitation would, as a practical matter, ensure that the two at-large seats would remain "the expectancy of the white vote" (J.S. App. 66a). In a city in which 34.5 percent of the registered voters are black, therefore, the overall effect of Plan II would

be to give black voters realistic access—at most—to one of the seven (14 percent) council seats.[19]

The court did not, however, base its ultimate findings merely on these statistics. Rather, it assessed their significance in light of the residual effects of the long history of racial discrimination in voting and other fields in Louisiana (J.S. App. 16a, 57a–60a) and the court's related finding that city office holders in New Orleans have generally been unresponsive to the

[19] In addition to the single councilmanic district (District B) in which black persons would comprise a slight majority (52.6 percent) of the registered voters, the court also found that under Plan II blacks would account for approximately one-half (50.6 percent) of the population of a second district (District E) (J.S. App. 39a). This does not mean, however, that a black-supported candidate would have a realistic chance of being elected to the City Council from District E given the prevalence of bloc voting—even in the absence of under-registration of black persons living in District E. As of the 1970 census, the proportion of the black population of New Orleans of voting age (267,308—total black population; 152,650—black voting age population; 57.1 percent—percentage of black population of voting age) was substantially below the proportion of the white population of voting age (326,163—total white population; 236,597—white voting age population; 72.5 percent—percentage of white population of voting age). See *The Voting Rights Act: Ten Years After*, A Report of the United States Commission on Civil Rights, 368 (1975); App. 624. If these voting-age percentages are applied to the population mix of District E, they reveal that blacks would comprise only about 44.5 percent of the voting age population of that district—even though they account for just over one-half of the total population (App. 624).

"wishes and wants of the black minority" (J.S. App. 18a; see *id.* at 63a).[20]

The court noted, for example, that until very recently participation by black citizens in councilmanic elections in New Orleans was limited by a variety of legal obstacles—including requirements that persons seeking to register submit strict proof of residency of specified duration and the confinement of registration to one location (City Hall) (J.S. App. 16a). And it was not until the present suit was filed that city registrars made any concerted efforts to reach out into New Orleans' black community to facilitate the registration of black persons (J.S. App. 16a, n. 65). The tactics that have been employed throughout Louisiana, including New Orleans, "with phenomenal success to keep Negroes from voting in the State" were summarized in *Louisiana* v. *United States, supra,* 380 U.S. at 147–150, and significantly inform the findings made by the district court (and previously by the Attorney General) in this case. See *White* v. *Regester, supra,* 412 U.S. at 765–770.

The court also found that the access of black persons in New Orleans to the political process is further

[20] The court's determination, accordingly, was not based on any notion that minority-group members are entitled to be represented in legislative councils by a proportional number of members of their own race. See, *e.g.*, *Whitcomb* v. *Chavis, supra*, 403 U.S. at 152–155.

limited by the candidate-selection methods currently used. Victory in the Democratic primary in New Orleans is generally tantamount to victory in the general election (J.S. App. 19a, n. 73). As a rule, however, black persons seeking to run in the Democratic primary have not been included in mayoral tickets headed by white candidates (see *id.* at 17a). Indeed, black candidates have been elected to citywide office in New Orleans only on the rare occasions when a black candidate was individually supported by a white organization in the City or by white candidates (*ibid.*). The inability of individual black candidates to form successful alliances with white candidates endorsed by the existing "white political power structure" has without exception proved fatal because it has impeded their efforts to gain citywide exposure (*ibid.*).

The court's findings indicate, moreover, that racial bloc voting is perhaps even stronger in New Orleans than is allegiance to the Democratic Party. The court found that "the only notable exception" to Democratic Party allegiance in recent years occurred in a state legislative race in which a black candidate had won the Democratic primary and was defeated in the general election by a Republican because of cross-over vote from traditionally Democratic white wards in the City (J.S. App. 19a, n. 73). Indeed, racial bloc voting in New Orleans was encouraged, until 1964, by the Louisiana statute declared unconstitutional in *Anderson* v. *Martin,* 375 U.S. 399, which required the Louisiana Secretary of State to print, in parentheses, the race of each candidate "[o]n the ballots to be used

in any state or local primary, general or special election * * *" (375 U.S. at 400, n. 1).

We submit that all of these factors, viewed together, amply support the district court's finding that Plan II would result in a sufficiently severe dilution of the voting strength of black citizens of New Orleans to require justification by the appellants. Indeed, remarkably similar considerations were deemed by this Court in *White* v. *Regester, supra,* 412 U.S. at 766–767, 769–770, to justify a finding that dilution of minority voting strength resulting from multi-member districting was unconstitutionally discriminatory. See, also, *Moore* v. *Leflore County Board of Election Commissioners,* 502 F. 2d 621, 627 (C.A. 5).

II

APPELLANTS' JUSTIFICATIONS FOR PLAN II WERE INSUFFICIENT TO WARRANT THE PLAN'S SUBSTANTIAL DILUTION OF MINORITY VOTING STRENGTH

Following its finding of dilution of black voting strength the district court examined in detail the City's justifications for Plan II, stating that the City's burden is to satisfy "the high standard" of the compelling interest test (J.S. App. 52a) and concluding that the City had not offered justifications sufficiently substantial to warrant "dilution of the vote * * * on the scale indicated here" (J.S. App. 53a). Appellants contend that they need show only a "rational basis" for the Plan (Br. 22–26), and assert that their justifications, in the form of "guidelines" to those respon-

sible for drafting the plan (set forth at pp. 28–29 of their brief), satisfy this test.

This contention ignores the fact that a Section 5 proceeding entails an inquiry made to insure preservation of Fifteenth Amendment rights (*South Carolina* v. *Katzenbach, supra,* 383 U.S. at 355)—an inquiry made in the implementation of legislation designed to insure that "millions of nonwhite Americans will now be able to participate for the first time on an equal basis in the government under which they live" (*id.* at 337).

This Court has consistently demanded a high standard of justification for state laws or procedures which curtail or diminish constitutionally protected rights (see, *e.g., Korematsu* v. *United States,* 323 U.S. 214, *Loving* v. *Virginia,* 388 U.S. 1; *McLaughlin* v. *Florida,* 379 U.S. 184; *Anderson* v. *Martin,* 375 U.S. 399) and, of course, the Fifteenth Amendment specifically prohibits denial or abridgement of voting rights on a racial basis, whether accomplished directly or indirectly (see, *e.g., Lane* v. *Wilson,* 307 U.S. 268).[21] Accordingly, even though Plan II would not amount to an absolute denial of the black citizen's right to

[21] Appellants' contention that a reapportionment plan reviewed under Section 5 must be upheld if supported by "reasonable" or "legitimate" state interests relies on cases stemming from *Reynolds* v. *Sims,* 377 U.S. 533 (see Br. at 22). The cases cited by appellants, however, did not involve any allegation that voting rights were being abridged on a racial basis (see, *e.g., Abate* v. *Mundt,* 403 U.S. 182, 184, n. 2; *Mahan* v. *Howell,* 410 U.S. 315, 318, n. 5), but were instead concerned with allegations of deviations from the "one-man, one-vote" standard of the Fourteenth Amendment.

vote and there was no finding of racial purpose, a "searching judicial scrutiny" was appropriate because the plan's dilutive effects would "impinge upon constitutionally protected rights." *San Antonio School District* v. *Rodriguez,* 411 U.S. 1, 40; see *id.* at 37–38.

Thus, regardless of whether the appellants' burden here was best characterized by the "compelling state interest" standard, the district court, after finding that the plan would substantially dilute black voting strength, correctly subjected appellants' justifications for the plan to careful scrutiny. In this context, we submit, that scrutiny should balance the magnitude of the plan's dilutive effects (in light of the importance of the rights protected by the Fifteenth Amendment and by Section 5) against the non-racial justifications offered for the plan. Unless those justifications show that the reasons supporting the particular plan[22] outweigh its dilutive effects, the plan should be rejected.[23]

[22] Appellants dispute the district court's statement that, were any justification possible for a voting plan which curtailed minority voting rights, the plaintiff must demonstrate that "nothing but [the plan] proposed * * * was feasible" (J.S. App. 53a). However, this statement merely acknowledges the principle that, when a State attempts to justify action which curtails constitutional rights, it must choose the least restrictive alternative, or the course of action with the least effect on those rights. See, *e.g., Dunn* v. *Blumstein,* 405 U.S. 330, 343; *Sherbert* v. *Verner,* 374 U.S. 398, 407; *Shelton* v. *Tucker,* 364 U.S. 479, 488.

[23] Under this general approach in those instances of submissions to him under Section 5 which arguably involve some dilution of minority voting strength, the Attorney General has requested that the State or political subdivision come forward

Under this standard, we submit, the district court correctly concluded that "the interests which the City asserts" do not "justify * * * the magnitude" of Plan II's dilution of black voting strength (J.S. App. 53a). The court's findings and the evidence at trial demonstrated in several ways that substantially less dilutive alternatives could satisfy the City's guidelines approximately as well as Plan II. Evidence was presented, for example, that plans in which districts were drawn on an east-west, rather than north-south, basis would comply with most of the city's guidelines. Indeed, the member of the City Council staff primarily responsible for the initial drafting of plans for the Council's consideration testified that he developed two east-west plans with which the staff was satisfied (App. 336–337). Consideration by the Council of such plans would have been one way to avoid the disproportionate number of majority white districts created by Plan II's north-south scheme.[24]

with justifications for the particular reapportionment plan in question. The Attorney General has ultimately not objected to the great majority of proposed reapportionments that have been submitted to him under the Voting Rights Act: from the date of the Act's original enactment through December 31, 1974, some 443 reapportionment plans were submitted to the Attorney General, and he interposed objections under Section 5 to 72 of them (many of which were then revised and approved as resubmitted).

[24] The record suggests that the City's insistence on north-south lines had its genesis in ward boundaries established in 1912 or 1914 (App. 183–184). This fact, plus the concern to preserve insofar as possible the historic boundaries of the districts from at least the last reapportionment in 1961 (*id.* at 176, 200), suggest that the Council did not consider the effect of its actions on those newly enfranchised by the Voting Rights Act of 1965.

Three of the "guidelines" used in drafting Plans I and II [25]—ward and precinct lines, natural boundaries, and man-made boundaries—are relied on by appellants as direct support for adherence to the north-south approach taken. Even before the plans were drafted, however, appellants recognized (see complaint, par. 9; App. 10), that, because of "one-man, one-vote" requirements, ward lines could not be observed (App. 200). As to precinct lines, appellants suggest that because elections for many different offices are tabulated on a voting machine at a single precinct, convenience requires that precincts not be split (App. 122). New Orleans' precincts are not large, however, averaging from 500 to 2,600 voters (App. 188), and a member of the Council's staff acknowledged that precinct lines could be observed by a plan which deviated substantially from the north-south direction of Plan II (App. 575; see also map at App. 626).[26] And the fact that precinct lines could be kept intact reduces to insignificance the need to consider alleged natural boundaries within New Orleans, except to the extent that they divide communities with differing economic or social interests.

However, the community of "economic and social"

[25] The evidence is undisputed that the drafting of Plan II occurred without consideration of the objections raised by the Attorney General with respect to Plan I (App. 351).

[26] Moreover, one of the council members acknowledged that an east-west plan need not be "irregularly shaped" (App. 379), indicating that the guideline of contiguousness and compactness (App. Br. at 29) need not be satisfied solely by adherence to the north-south direction of Plan II.

interests guideline upon which appellants also rely as justifying, in part, the north-south direction of the districts of Plan II was not consistently observed. The Council staff was well aware that one area of the City—that bordering on Lake Pontchartrain—has a common social and economic interest (App. 572); but under Plan II, the lakefront is divided among four districts (see App. 624). Conversely, the Algiers area, which was also recognized as an area with "a community of interest" (App. 572), was in fact divided among three districts by Plan I (see App. 623), but ultimately placed entirely within one district (App. 624). And, most importantly, it is undisputed that Plan II fragments the black community located in the center city—contrary to appellants' purported guideline (App. Br. 28) that the "[r]edistricting should be accomplished without diluting the voting rights of any minority group * * *."[27]

Finally, we note that another guideline actually followed in the drafting of Plan II was to attempt to keep incumbents apart in the new districts (see, *e.g.*, App. 557, 206–207, 344). The Council's Staff Director stated that several councilmen told him of their desire to be kept in districts apart from other incumbents (App. 208), and it was undisputed that given the residences of the members of the Council a plan with north-south districts was necessary to achieve this result (App. 344). The desire to keep incumbents apart, however, though it may have merit in other contexts, is entitled to no weight as a justification for

[27] The evidence indicates, however, that those drafting the plan attempted to maintain a similar racial composition to that in the existing districts (App. 213, 244–246).

abridgement of voting rights. See *Moore* v. *Leflore County Board of Election Commissioners, supra,* 502 F. 2d at 625.

In sum, the district court's conclusion that the guidelines purportedly used by the City in the drafting of Plan II did not justify the plan's severe racially dilutive effect was correct.[28] The guidelines were followed to the extent that they justified the desire to adhere to the existing system as much as possible (partially in order to keep incumbents apart), and ignored to the extent that they could justify, with equal authority, a different zoning plan which would not similarly fragment the black community.

[28] Contrary to appellants' contention (App. Br. 31), the district court correctly held that its determination that Plan II's effect failed to meet the statutory standard made it unnecessary for the court to decide whether Plan II was also racially discriminatory in purpose.

Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, explicitly provides that political entities covered by Section 4 bear the burden of demonstrating that a proposed change in voting procedures will be racially non-discriminatory both in purpose *and* effect:

"* * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose *and* will not have the effect of denying or abridging the right to vote on account of race or color * * *" (emphasis added).

See *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 565, n. 29; *Perkins* v. *Matthews*, *supra*, 400 U.S. at 387. See, also, Senate Hearings, *supra*, n. 14, at 507. Indeed this Court affirmed the denial by a district court of a request for a declaratory judgment under Section 5 because the proposed voting change had been found to have a racially discriminatory effect—despite an express finding that the change was not discriminatory in purpose. *City of Petersburg, Virginia* v. *United States*, 410 U.S. 962, affirming, 354 F. Supp. 1021 (D. D.C.).

Consequently, whether measured pursuant to a compelling state interest standard or a somewhat less exacting standard, the justifications offered by the City are not of the substantial nature required to condone the effect of Plan II. The severe effect of the dilution found here would require a showing by the appellants of the absence of reasonable alternatives with a lesser racial effect. In the absence of such a showing, and indeed in light of the findings and evidence that such alternatives were in fact available, the declaratory judgment requested below was properly denied.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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